

ATTACHMENT 20

645

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
3
4 IN RE: PROCESSED EGG PRODUCTS :
5 ANTITRUST LITIGATION :
6 -----: MDL No. 2002
7 THIS DOCUMENT APPLIES TO: : 08-MD-02002
8 ALL ACTIONS :
9
10 -- HIGHLY CONFIDENTIAL --
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14
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17

18 Continued videotaped deposition of
19 GENE W. GREGORY, taken at the offices of
20 Pepper Hamilton LLP, 3000 Two Logan Square,
21 18th & Arch Street, Philadelphia,
22 Pennsylvania 19103, beginning at 8:08 a.m.,
23 before LINDA ROSSI RIOS, RPR, CCR and Notary
24 Public.
25

<p style="text-align: center;">646</p> <p>1 APPEARANCES :</p> <p>2</p> <p>3 QUINN EMANUEL UROUHART & SULLIVAN BY: STEIG D. OLSON, ESQUIRE</p> <p>4 and LEE TURNER-DODGE, ESQUIRE</p> <p>5 51 Madison Avenue, 22nd Floor New York, New York 10010</p> <p>6 212-849-7152 212-849-7000</p> <p>7 steigolson@quinnemanuel.com leeturnerdodge@quinnemanuel.com</p> <p>8 On behalf of the Direct Purchaser Plaintiffs</p> <p>9</p> <p>10 MILBERG LLP BY: CHARLES SLIDERS, ESQUIRE</p> <p>11 One Pennsylvania Plaza 12 New York, New York 10119 646-733-5727</p> <p>13 csldiders@milberg.com On behalf of the Indirect Purchaser Plaintiffs</p> <p>14</p> <p>15 HAUSFELD, LLP BY: JEANNINE M. KENNEY, ESQUIRE</p> <p>16 1604 Locust Street 2nd Floor 18 Philadelphia, Pennsylvania 19103 215-985-3270</p> <p>19 jkenney@hausfeldllp.com On behalf of Direct Purchaser Plaintiffs</p> <p>20</p> <p>21 JENNER & BLOCK, LLP BY: RICHARD P. CAMPBELL, ESQUIRE</p> <p>22 353 North Clark Street 23 Chicago, Illinois 60654 312-923-2818</p> <p>24 rcampbell@jenner.com On behalf of Kraft Foods Global, Inc.</p> <p>25</p>	<p style="text-align: center;">648</p> <p>1 GIBSON, DUNN & CRUTCHER LLP BY: JASON C. MCKENNEY, ESQUIRE</p> <p>2 2100 McKinney Avenue Dallas, Texas 75201-6912</p> <p>3 214-698-3279 jmckenney@gibsondunn.com</p> <p>4 On behalf of Defendant, Cal-Maine Foods, Inc.</p> <p>5</p> <p>6 PORTER, WRIGHT, MORRIS & ARTHUR BY: DONALD M. BARNES, ESQUIRE</p> <p>7 1919 Pennsylvania Avenue, NW 8 Suite 500 Washington, D.C. 20006</p> <p>9 202-778-3056 dbarnes@porterwright.com</p> <p>10 On behalf of Rose Acre Farms</p> <p>11</p> <p>12 KASOWITZ BENSON TORRES & FRIEDMAN, LLP BY: MARGARET ZIEMIANEK, ESQUIRE</p> <p>13 101 California Street San Francisco, California 94111</p> <p>14 415-655-4335 mziemianek@kasowitz.com</p> <p>15 On behalf of Nu-Cal Foods, Inc.</p> <p>16</p> <p>17 BUCHANAN, INGERSOLL & ROONEY BY: SAMANTHA L. SOUTHALL, ESQUIRE</p> <p>18 Two Liberty Place 50 S. 16th Street</p> <p>19 Suite 3200 Philadelphia, Pennsylvania 19102</p> <p>20 215-665-3884 samatha.southall@bipc.com</p> <p>21 On behalf of Hillandale Farms, Inc., Hillandale Farms East, Inc., Hillandale 22 Gettysburg LP and Hillandale Farms of Pa., Inc.</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">647</p> <p>1 FAEGRE BAKER DANIELS BY: RYAN M. HURLEY, ESQUIRE</p> <p>2 300 North Meridian Street Suite 2700 3 Indianapolis, Indiana 46204-1750 317-237-1144</p> <p>4 ryan.hurley@faegredb.com On behalf of Midwest Poultry Services</p> <p>5</p> <p>6 DECHERT LLP 7 BY: CHRISTINE C. LEVIN, ESQUIRE Cira Center 8 2929 Arch Street Philadelphia, Pennsylvania 19104 9 215-994-2421 christine.levin@dechert.com</p> <p>10 On behalf of RW Sauder, Inc.</p> <p>11</p> <p>12 PEPPER HAMILTON, LLP BY: JAN P. LEVINE, ESQUIRE</p> <p>13 WHITNEY REDDING, ESQUIRE and</p> <p>14 ROBIN SUMNER, ESQUIRE</p> <p>15 3000 Two Logan Square 18th & Arch Street Philadelphia, Pennsylvania 19103</p> <p>16 215-981-4714 215-981-4121</p> <p>17 215-981-4652 levinej@pepperlaw.com</p> <p>18 reddingw@pepperlaw.com</p> <p>19 summer@pepperlaw.com</p> <p>20 On behalf of United Egg Producers and the United States Egg Marketers</p> <p>21</p> <p>22 MARCUS & SHAPIRA LLP BY: MOIRA E. CAIN-MANNIX, ESQUIRE</p> <p>23 One Oxford Center 35th Floor Pittsburgh, Pennsylvania 15219</p> <p>24 412-338-3344 cain-mannix@marcus-shapira.com</p> <p>25 On behalf of Giant Eagle, Inc.</p>	<p style="text-align: center;">649</p> <p>1 BRIGGS and MORGAN BY: TROY HUTCHINSON, ESQUIRE</p> <p>2 2200 IDS Center 80 South 8th Street 3 Minneapolis, Minnesota 55402 612-977-8415</p> <p>4 thutchinson@briggs.com On behalf of Sparboe Farms, Inc.</p> <p>5</p> <p>6 WEIL, GOTSHAL & MANGES LLP 7 BY: CARRIE M. ANDERSON, ESQUIRE 1300 Eye Street, N.W. 8 Suite 900 Washington, D.C. 20005</p> <p>9 202-682-7231 carrie.anderson@weil.com</p> <p>10 On behalf of Defendant, Michael Foods</p> <p>11</p> <p>12 TELEPHONIC APPEARANCES:</p> <p>13 DINSMORE & SHOHL LLP 14 BY: THOMAS L. CZECHOWSKI, ESQUIRE 1100 Courthouse Plaza, SW 15 10 N. Ludlow Street Dayton, Ohio 45402</p> <p>16 937-463-4928 thomas.czechowski@dinsmore.com</p> <p>17 On behalf of Weaver Brothers</p> <p>18</p> <p>19 EIMER STAHL, LLP BY: VANESSA G. JACOBSEN, ESQUIRE</p> <p>20 224 South Michigan Avenue, Suite 1300 Chicago, Illinois 60604</p> <p>21 312-660-7604 vjacobsen@eimerstahl.com</p> <p>22 On behalf of Moark LLC, and Norco Ranch, Inc.</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">650</p> <p>1 LOVELL STEWART HALEBIAN & JACOBSON LLP BY: MERRICK SCOTT RAYLE, ESQUIRE 2 61 Broadway, Suite 501 New York, New York 10006 3 212-608-1900 msrayle@sbcglobal.net 4 On behalf the Indirect Purchaser Plaintiffs 5 6 VERITEXT VIRTUAL APPEARANCES: 7 8 BAKER & MCKENZIE LLP BY: PATRICK J. AHERN, ESQUIRE 9 300 East Randolph Street Chicago, Illinois 60601 10 312-861-3735 patrick.ahern@bakermckenzie.com 11 On behalf of Winn-Dixie, Inc., Roundy's Supermarkets, Inc., 12 C&S Wholesaler Grocers, Inc., and H.J. Heinz Company, L.P. 13 14 15 16 ALSO PRESENT : 17 ROBERT MIRABELLA, Videographer 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">652</p> <p>1 EXHIBITS (cont'd.) 2 - - - 3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 4 5 Gregory-86 12/30/03 United Voices, MOARK006744 - 0006756 737 6 Gregory-87 4/15/04 Letter, NUCAL-08md2002-0001653 739 7 8 Gregory-88 6/1/04 Letter, NUCAL-08md2002-0001440 741 9 Gregory-89 Packet of documents, MOARK0020062 - 0020096 746 10 11 Gregory-90 Animal Welfare Committee October 10, 2006 San Antonio, TX, 12 MOARK0027352 - 0027389 771 13 Gregory-91 1/20/09 United Voices, RWS 000000775 - 781 780 14 15 Gregory-92 E-mail chain, CF0008607 787 16 Gregory-93 Impacts of Banning Modern Cage Egg Production in the United States press release, CM00187932 - CM00187935 788 17 18 Gregory-94 Impacts of Banning Cage Egg Production in the United States report, CPCEGED00132106 - 19 CPCEGED00132145 789 20 21 Gregory-95 UEP Board of Directors' Meeting, UB00007529 - UB00007534 791 22 23 Gregory-96 E-mail chain, CF0005677 805 24 25</p>
<p style="text-align: right;">651</p> <p>1 INDEX 2 - - - 3 Testimony of: GENE W. GREGORY 4 By Mr. Olson 661, 958 5 By Ms. Cain-Mannix 736 6 By Mr. Slidders 783 7 By Ms. Levine 820 8 By Mr. Barnes 940 9 - - - 10 EXHIBITS 11 - - - 12 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 13 14 Gregory-79 7/2/99 Letter, BELL007698 - BELL007709 661 15 Gregory-80 11/22/06 Letter, UE0302008 & UE0302009 675 16 17 Gregory-81 4/17/07 Letter, NUCAL-08md2002-0000456 & 08md2002-0000457 684 18 19 Gregory-82 1/3/08 United Voices, UE0619780 - UE0619789 687 20 Gregory-83 PowerPoint presentation, UE0533500 - UE0533514 692 21 22 Gregory-84 7/21/08 E-mail with attachment, UE0354878 - UE0354882 710 23 24 Gregory-85 9/24/08 E-mail, NUCAL-08md2002-0056239 & NUCAL-08md2002-0056240 733 25</p>	<p style="text-align: right;">653</p> <p>1 EXHIBITS (cont'd.) 2 - - - 3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 4 5 Gregory-97 Economic Impacts of Converting US Production to Enrich Cage Systems, CF0005678 - CF0005704 805 7 8 Gregory-98 Shell Egg Marketing Committee October 11, 2006 San Antonio, TX 9 marketing material, UE0210026 - UE0210047 808 10 11 Gregory-99 9/26/05 Letter, UE0212411 - UE0212413 812 12 Gregory-100 3/19/08 Letter, NL003516 & NL003517 813 13 14 Gregory-101 2/6/07 E-mail, MF10004431 - MF10004433 814 15 Gregory-102 E-mail chain, RWS 000011241 & 11242 815 16 17 Gregory-103 Animal Welfare Report for 2003 Area Meetings, MF10024405 - MF10024422 817 18 19 Gregory-104 E-mail chain, NL00327492 & NL00327493 818 20 Gregory-105 2/1/05 Letter, UE0145966 - UE0145969 830 21 22 Gregory-106 United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, UE0225056 - UE0225085 848 23 24 25</p>

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<p style="text-align: right;">654</p> <p>1 EXHIBIT S (cont'd.) 2 - - - 3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED 4 5 Gregory-107 United Egg Producers 6 Animal Husbandry Guidelines for U.S. Egg Laying Flocks, UEO295925 - UEO295940 881 7 8 Gregory-108 10/4/04 Letter, 9 UEO176451 906 10 Gregory-109 UEP-Producer Committee For Animal Welfare January 24, 2005 Atlanta, GA Minutes, UEO210295 - UEO210298 921 11 Gregory-110 Letter, UEO176108 938 12 13 Gregory-111 11/17/04 E-mail, NL 000482 944 14 Gregory-112 A Membership Opportunity Presented By UEP and Midwest UEP To ROSE ACRE FARMS® THE GOOD EGG PEOPLE®, UEO186974 & UEO186975 946 15 16 Gregory-113 UEP Membership agreement, UEO148105 949 17 Gregory-114 Major Prospects for UEP, UEO198410 951 18 19 Gregory-115 12/22/06 USEM Membership Agreement and Export Commitment 953 20 21 Gregory-116 E-mail chain, MFI0247110 956 22 - - - 23 24 25</p>	<p style="text-align: right;">656</p> <p>1 2 - - - 3 (It is hereby stipulated and 4 agreed by and among counsel that 5 sealing, filing and certification are 6 waived; and that all objections, 7 except as to the form of the question, 8 will be reserved until the time of 9 trial.) 10 - - - 11 VIDEOGRAPHER: We are now on the 12 record. Please note that the 13 microphones are sensitive and will 14 pick up whispering and private 15 conversations. Please turn off all 16 cell phones or place them away from 17 the microphones as they can interfere 18 with the deposition audio. Recording 19 will continue until all parties agree 20 to go off the record. 21 My name is Robert Mirabella 22 representing Veritext New York. 23 The date today is June 27, 2013, 24 and the time is approximately 25 8:08 a.m.</p>
<p style="text-align: right;">655</p> <p>1 DEPOSITION SUPPORT INDEX 2 3 DIRECTION TO WITNESS NOT TO ANSWER 4 Page Line Page Line 5 (None) 6 7 8 9 REQUEST FOR PRODUCTION OF DOCUMENTS 10 Page Line Description 11 (None) 12 13 14 STIPULATIONS 15 Page Line 16 656 3-9 17 18 19 QUESTIONS MARKED 20 Page Line 21 (None) 22 23 24 25</p>	<p style="text-align: right;">657</p> <p>1 2 This deposition is being held at 3 Pepper Hamilton, located at Two Logan 4 Square, Philadelphia, Pennsylvania. 5 The caption of this case is In Re: 6 Processed Egg Products Antitrust 7 Litigation. This case is filed in the 8 United States District Court, Eastern 9 District of Pennsylvania. The case 10 number is 08-MD-02002, MDL number 11 2002. This is the continuing 12 videotape deposition of Gene Gregory. 13 At this time the attorneys 14 present and attending remotely will 15 please identify themselves and the 16 parties they represent. 17 MR. OLSON: Steig Olson for 18 Quinn Emanuel Urquhart & Sullivan for 19 the Direct Purchaser Class Plaintiffs. 20 MS. DODGE: Lee Turner-Dodge 21 also from Quinn Emanuel also for the 22 Direct Purchaser Class Plaintiffs. 23 MR. CAMPBELL: Richard Campbell, 24 Jenner & Block for the Kraft 25 plaintiffs.</p>

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<p style="text-align: right;">658</p> <p>1 2 MS. CAIN-MANNIX: Moria 3 Cain-Mannix, Marcus & Shapira for 4 Giant Eagle. 5 MR. SLIDDERS: Charles Slidders 6 from Milberg LLP for the Indirect 7 Purchaser Plaintiffs. 8 MS. KENNEY: Jeannine Kenney 9 with Hausfeld, LLP for the Direct 10 Purchaser Plaintiffs. 11 MR. HUTCHINSON: Troy Hutchinson 12 on behalf of defendants Sparboe Farms 13 Inc. 14 MS. LEVIN: Christine Levin of 15 Dechert on behalf of RW Sauder. 16 MS. ZIEMIANEK: Margaret 17 Ziemanek, Kasowitz Benson Torres & 18 Friedman on behalf of defendant Nu-Cal 19 Foods. 20 MR. HURLEY: Ryan Hurley, Faegre 21 Baker Daniels for Midwest Poultry 22 Services. 23 MR. MCKENNEY: Jason McKenney, 24 Gibson, Dunn & Crutcher on behalf of 25 Cal-Maine Foods.</p>	<p style="text-align: right;">660</p> <p>1 2 - - - 3 VIDEOPHOTOGRAPHER: The time is 4 8:12 a.m. We are back on the record. 5 MS. LEVINE: We're back on the 6 record. 7 MR. OLSON: We made appearances 8 here in person and now could we have 9 appearances on the phone, please? 10 MR. CZECHOWSKI: This is Tom 11 Czechowski for Weaver Brothers. 12 MS. JACOBSEN: Vanessa Jacobsen 13 from Eimer Stahl for Moark LLC and 14 Norco Ranch, Inc. 15 VIDEOPHOTOGRAPHER: Thank you. Our 16 court reporter, Linda Rossi 17 representing Veritext will, please, 18 swear in the witness and we can 19 proceed. 20 - - - 21 GENE W. GREGORY, after having 22 been duly sworn, was examined and 23 testified as follows: 24 - - - 25 EXAMINATION</p>
<p style="text-align: right;">659</p> <p>1 2 MS. SOUTHLAND: Samantha Southall 3 of Buchanan, Ingersoll & Rooney on 4 behalf of defendants, Hillendale Farms 5 of Pa., Inc., Hillendale Gettysburg 6 LP, Hillendale Farms East, Inc., and 7 Hillendale Farms, Inc. 8 MR. BARNES: Don Barnes of 9 Porter, Wright on behalf of Rose Acre 10 Farms, Inc., and there's only one of 11 them. 12 MS. REDDING: Whitney Redding, 13 Pepper Hamilton on behalf of UEP and 14 USEM. 15 MS. SUMNER: Robin Sumner, 16 Pepper Hamilton on behalf of UEP and 17 USEM. 18 MS. LEVINE: Jan Levine, Pepper 19 Hamilton on behalf of UEP and USEM. 20 COURT REPORTER: We need to go 21 off the record. 22 VIDEOPHOTOGRAPHER: The time is 8:10. 23 Off the record. 24 - - - 25 (A recess was taken.)</p>	<p style="text-align: right;">661</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 - - - 3 BY MR. OLSON: 4 Q. Good morning, Mr. Gregory. 5 A. Good morning. 6 Q. How are you doing physically 7 today? 8 A. I will make it through the day. 9 Q. Okay. All right. Let me hand 10 you what we'll mark as Gregory Exhibit 79. 11 - - - 12 (Exhibit Gregory-79, 7/2/99 13 Letter, Bates BELL007698 - BELL007709, 14 was marked for identification.) 15 - - - 16 BY MR. OLSON: 17 Q. Please go ahead and review the 18 document, or just the cover page and you can 19 maybe flip through some of the attachments. 20 For the record, this document 21 is Bates stamped BELL007698 through 7709. 22 Let us know when you've had a chance to 23 briefly familiarize yourself with the 24 document. 25 A. There's an awful lot here, but</p>

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<p style="text-align: center;">662</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I think I recognize what this is and what 3 it's about. 4 Q. So can you identify this as a 5 document that you received from John Bell in 6 July of 1999? 7 A. The name is Don. I thought you 8 said John, I'm sorry. 9 Q. I certainly meant to say Don. 10 A. Okay. Yes, it is. 11 Q. Mr. Bell refers to your egg 12 industry statistics request? 13 A. Yes. 14 Q. What does that refer to? 15 A. The question was, again, I'm 16 sorry? 17 Q. What does that refer to? What 18 is an egg industry statistics request? 19 A. These are statistics that he 20 kept updated for I don't know, gosh, maybe 21 back to 1983 or something like that. And 22 distributed monthly. I think that's -- 23 Q. And he distributed it monthly 24 to UEP? 25 A. UEP was one of the people that</p>	<p style="text-align: center;">664</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I don't know what further question might be. 3 Maybe I -- 4 Q. Was he ever hired to do 5 anything? 6 A. Yeah, he had -- I don't know 7 how many years he worked for the University 8 of California as a poultry specialist or 9 poultry extension worker. I'm not sure what 10 the exact title was. And he had provided -- 11 he was the only source in the industry 12 providing the -- this kind of statistical 13 work. And upon his retirement at the 14 university, they agreed to allow him to 15 maintain an office, but he was not going to 16 have any income source by which he could 17 continue to gather this kind of information. 18 There was no one else in the industry or any 19 other economist or any other statistician 20 that was keeping this kind of information. 21 So it was critically important to the 22 industry that this kind of information not be 23 lost and that it be maintained. So we were 24 trying to contract with him to bridge the gap 25 until someone later could be found.</p>
<p style="text-align: center;">663</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 he shared the information with. 3 Q. Now, is what's attached to this 4 cover letter what Mr. Bell refers to by an 5 egg industry statistics request or is that 6 something different? 7 A. No, this is the normal stuff 8 that he does, he did every month. Just 9 updating it from month to month. 10 Q. But in the first line of his 11 letter, he says, "Your egg industry 12 statistics request was FAXED to you today and 13 will be mailed in Priority mail to you on 14 next Tuesday," which indicates to me that 15 that's something different. 16 A. I don't recall the reason why I 17 was evidently interested in something before 18 it came out, and I don't know what the need 19 was. 20 Q. Okay. Did UEP from time to 21 time engage Mr. Bell in consulting projects? 22 A. There were times when Don Bell 23 was an invited like speaker at a meeting that 24 we'd have to provide some statistical 25 information. Beyond that, I don't recall and</p>	<p style="text-align: center;">665</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Eventually, I can't pronounce his name, but a 3 gentleman named Maro at Iowa State University 4 took over this work from Don Bell. 5 Q. When you say this work and this 6 type of information, generally how would you 7 describe the type of information that Mr. 8 Bell would provide? 9 A. He was using USDA, he kept this 10 for years of information that was published 11 by USDA and Urner Barry and then he would 12 take that information and try to make some 13 projections with it or try to analyze what 14 the conditions were and so forth. So he was 15 tracking monthly hen inventories, monthly 16 slaughter, chick hatch, a whole variety of 17 information, most of which, in fact, I think 18 was from USDA. However, he also tracked 19 information as it related to like corn and 20 soybean prices as reported, I think, by the 21 Chicago Board of Trade. He also tracked eggs 22 moving particularly from other states into 23 California. He also tracked things like the 24 USDA, I think this was USDA retail, the 25 average retail prices and so forth. So the</p>

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<p style="text-align: center;">666</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 whole host of different things that he 3 tracked. And the good thing about that was 4 that with his work, you could compare today 5 all the way back to, say, in the 1980s if you 6 needed to and so forth, so... 7 Q. And generally the information 8 he tracked related to the supply of eggs? 9 MS. LEVINE: Objection. Asked 10 and answered. 11 THE WITNESS: I don't think it 12 was -- no, I don't think it was 13 limited just to the supply of eggs. 14 As I just said, it was what the layer 15 inventory was, what the chick hatch 16 was, what the slaughter was. It's a 17 whole host of things. 18 BY MR. OLSON: 19 Q. Fair enough. Let's turn to the 20 second to the last page in this document, it 21 ends in the Bates stamp of 08. Why don't you 22 go ahead and review that page and let me know 23 when you're done. 24 A. (Reviewing document.) 25 So I've scanned it.</p>	<p style="text-align: center;">668</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I don't know. I can't recall 3 what my discussions would have been. 4 Q. You see the fourth idea that 5 Mr. Bell is putting forward? 6 A. Yes. 7 Q. Or a way that the nation's 8 layer flock could be corrected? 9 A. Right. 10 Q. It involves an industry-wide 11 policy of a minimum floor space allowance. 12 Right? 13 A. Yes. Yes. 14 Q. You see it says, "If 48 square 15 inches were adopted as the minimum space 16 allowance, millions of extra birds would be 17 eliminated." Right? 18 A. Yes. 19 Q. So would it be fair to say that 20 by July of 1999 you were aware of the idea 21 that a minimum floor space allowance could be 22 part of the supply adjustment program? 23 MS. LEVINE: Object to the form 24 of the question. Mischaracterization. 25 THE WITNESS: One of the things</p>
<p style="text-align: center;">667</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Do you recall seeing the 3 information on this page before? 4 A. This, I believe, is 1999, and 5 it would be hard for me to recall whether I 6 had seen this previously or not. 7 Q. So Mr. Bell discusses how 8 correction in the size of the nation's layer 9 flock could be attained. Do you see that? 10 A. Yes, he does. 11 Q. Is that the type of thing that 12 Mr. Bell would discuss in his materials from 13 time to time? 14 A. Again, you're asking me for 15 many years, but, yes, I think there were -- 16 periodically he did discuss them. 17 Q. And did -- would you have 18 one-on-one conversations with Mr. Bell by 19 phone or in person ever? 20 A. Oh, yes. There were times we 21 had phone conversations, yes. 22 Q. And is that a subject, this 23 idea of corrections in the size of the 24 nation's laying flock that you would discuss 25 with Mr. Bell from time to time?</p>	<p style="text-align: center;">669</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that is a problem here is that if 3 you're truly, and I have been truly 4 interested in animal welfare for many, 5 many years, if what our industry had 6 gotten themselves into is that they 7 were cramming chickens into cages and 8 into houses, into conditions that I 9 personally thought was inhumane, but 10 what they were trying to do is 11 maximize the revenues from a house 12 total rather than evaluating 13 performance of the laying hen on an 14 individual basis. So we were 15 compromising their genetic potential 16 by doing that. And we had people in 17 the industry that were stocking birds 18 in conditions as low as 43 square 19 inches per bird which is just -- I 20 just think it's embarrassing to say 21 that, but we were. So what he is 22 speaking about here, he's talking 23 about just a minimum of 48 square 24 inches which is still unacceptable. 25 But he's saying if you did nothing</p>

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<p style="text-align: center;">670</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 more than that, this is what could 3 happen. 4 BY MR. OLSON: 5 Q. The question is just, would it 6 be fair to say that by July of 1999 you were 7 aware of the idea that a minimum floor space 8 allowance, whatever it was, could be part of 9 the supply adjustment program? 10 MS. LEVINE: Object to the form 11 of the question. Asked and answered. 12 THE WITNESS: I obviously would 13 have been if I read this document in 14 1999. 15 BY MR. OLSON: 16 Q. Do you recall, in fact, that 17 you did read the document and, in turn, 18 distributed these ideas to the industry 19 through the United Voices newsletter? 20 A. Again, this is -- 21 Q. We looked at it earlier. If 22 you don't recall, it's Exhibit 11. 23 A. I don't recall. I don't 24 recall. 25 Q. It's Exhibit 11. Why don't you</p>	<p style="text-align: center;">672</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. Then there's the 1, 2, 3, 4 4 that we just looked at. 5 A. Yes. 6 Q. Right? 7 A. Yes. 8 Q. So there's no question that you 9 saw what Mr. Bell -- you saw this information 10 from Mr. Bell in July of 1999 and, in fact, 11 put it in your newsletter. Correct? 12 A. I found no reason why that 13 information was prohibited from being shared. 14 Q. I just wanted, since one of 15 your answers indicated some doubt about 16 whether you had seen it, I just wanted the 17 record to be clear that it's clear you saw it 18 and you distributed it? 19 A. I'm not questioning that. I'm 20 just saying to you that 1999 and trying in 21 2013 to recall something that specific, I 22 can't -- 23 Q. Right. But -- 24 A. Unless you show me the 25 document, I can't do that.</p>
<p style="text-align: center;">671</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 take a look at Exhibit 11? 3 A. I'm sorry, do what? 4 Q. Can you take a look at 5 Exhibit 11 in your stack, please? 6 A. Which is Exhibit 11? 7 MS. LEVINE: This one. 8 THE WITNESS: 11, that goes way 9 back to the first. 10 BY MR. OLSON: 11 Q. To the 11th, the 11th exhibit. 12 A. Exhibit 11? 13 Q. Right. 14 A. I have 11. 15 Q. Just pull it out, this will be 16 brief. 17 A. Okay. 18 Q. If you look at the bottom of 19 page 2, we did this a couple of days ago. 20 A. Yes. 21 Q. "ROLLER COASTER EGG PRICE 22 QUOTES." And then if you turn to page 3, 23 you'll see the -- you say, "Don Bell has 24 suggested that corrections in the nation's 25 flock size..."</p>	<p style="text-align: center;">673</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Now that you've seen the 3 document, you have no doubt that you saw what 4 Mr. Bell sent you in July of 1999 and 5 distributed it. Correct? 6 A. Yes. 7 Q. You can put those both aside. 8 Now, what were your 9 responsibilities for the export program that 10 was managed by UEP, during the period while 11 it was managed by UEP, while USEM was managed 12 by UEP? 13 A. So clear that up for me. While 14 UEP is providing management for U.S. Egg 15 Marketers, is that the question? 16 Q. Right. 17 A. Well, first of all, I had no 18 title, so I wasn't president, CEO or anything 19 whatsoever, they wanted to be on the cheap. 20 So I -- my role was that as we received an 21 inquiry from an export customer, that I would 22 take that inquiry, try to determine how many 23 loads they wanted, when they wanted them, 24 what price they were willing to pay, et 25 cetera. And then I would have a conference</p>

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<p style="text-align: right;">674</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 call with a U.S. egg marketer, what we call 3 then was Executive/Export Committee. So I 4 would convey this message to the -- that 5 committee. They would then say to me they're 6 not interested at all or they are interested 7 but we don't think the price is good enough, 8 can you get 5 cents more or can we make the 9 delivery such and such. So as such, I was 10 kind of a go-between between that committee 11 and the export buyer making an inquiry. 12 Q. And what was Phyllis Blizzard's 13 role in this process? 14 A. Once -- once the membership had 15 returned their ballot confirming their 16 support for or opposed to the export, or if 17 they confirmed their approval of the export 18 order, then I turned it over to Phyllis who 19 then was responsible for all the -- all the 20 mountains of paperwork it takes from all the 21 USDA certificates and et cetera and so forth. 22 So she worked with the egg producers to get 23 those eggs to the ports. She worked with the 24 trucking companies and with the cross dock 25 people and so forth. She handled all the</p>	<p style="text-align: right;">676</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. The letter discusses a recent 4 export of 90 containers that have been 5 completed. Correct? 6 A. Yes. 7 Q. You note that the export had 8 accomplished its goal of improving domestic 9 prices. Right? 10 A. Yes. 11 Q. And that was the primary goal 12 of these exports. Correct? 13 MS. LEVINE: Object to the form 14 of the question. 15 THE WITNESS: Exports are taken 16 to try to address a surplus situation 17 when the price of eggs is in very poor 18 conditions and it is intended to try 19 to improve the domestic price of eggs. 20 It is not intended to short the supply 21 of eggs. It is intended for a 22 short-term period to improve domestic 23 prices. There's nothing that I know 24 of wrong with egg producers trying to 25 correct a situation when they are</p>
<p style="text-align: right;">675</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 nitty-gritty work to make it happen. 3 Q. So am I understanding it 4 correctly that Ms. Blizzard would generally 5 only become involved after the decision was 6 made to take an export? 7 A. Yes. 8 Q. Up until that point, it was 9 largely you working with the committee? 10 A. Yes. 11 - - - 12 (Exhibit Gregory-80, 11/22/06 13 Letter, Bates UE0302008 & UE0302009, 14 was marked for identification.) 15 - - - 16 BY MR. OLSON: 17 Q. Let me hand you what we've 18 marked as Gregory-80. Please go ahead and 19 briefly review the document. This document 20 is Bates stamped UE0302008 through 009. 21 A. (Reviewing document.) 22 I've scanned it. 23 Q. Can you identify it as a letter 24 you wrote to USEM members on November 22, 25 2006?</p>	<p style="text-align: right;">677</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 losing lots of money. 3 BY MR. OLSON: 4 Q. And the second bullet point -- 5 A. Let me make a point here, if 6 you don't mind, Steig. 7 Q. Well, why don't you do that 8 when your counsel asks you questions. 9 A. But I think that you need to 10 understand something as well. 11 Q. Well, you know, I'm just trying 12 to get the facts at this point. No one is -- 13 I'm not even suggesting anything is wrong, I 14 just want to make sure we're clear on the 15 facts. 16 MS. LEVINE: Mr. Olson is going 17 to ask you questions, then I'm going 18 to ask you all the questions that you 19 wanted to say. It's noted in the 20 record. We'll go back and ask about 21 this document. Okay? 22 THE WITNESS: Okay. 23 BY MR. OLSON: 24 Q. Tell you what, since you look 25 like you really want to make the point now,</p>

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<p style="text-align: center;">678</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 why don't you go ahead. 3 A. Well, my point is that like so 4 many agriculture products, eggs are a 5 commodity. We cannot perfectly have the 6 right number of eggs all the time. We have 7 high -- as I told you before, we have high 8 demand and low demand periods. We unlike 9 many products in agriculture do not have a 10 government subsidy. We do not have like a 11 crop insurance program. We do not have a 12 guaranteed price control. We have nothing 13 from the government to assist egg farmers 14 with managing their supply or managing their 15 profitability. Egg farmers, therefore, have 16 to find sources for the market of those eggs 17 when the conditions are such that we're 18 producing far more than needed. So I want 19 you to understand that there is no other 20 recourse for egg farmers as an insurance or 21 subsidy other than the recourse is go 22 bankrupt.</p> <p>Q. Now, I've seen references to something that's called a DOJ marketing order.</p>	<p style="text-align: center;">680</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 egg farmers were just too damned independent 3 and they wanted to be able to grow when they 4 wanted to, they wanted to have acquisition 5 when they wanted to. So they -- not a 6 sufficient number of them were interested in 7 it nor did we believe that USDA would permit 8 it to be done. Other than that, I can't 9 recall and I'm not -- I hope my memory is 10 good enough for that. If that's -- is it 11 Richard, is that what you're referring to?</p> <p>MR. CAMPBELL: It wasn't from me.</p> <p>THE WITNESS: It wasn't what you were referring to. Okay. Then other than that, I don't know what we're talking about.</p> <p>BY MR. OLSON:</p> <p>Q. No, that was helpful.</p> <p>There's a second bullet on Gregory-80, and, again, we're just covering some of the facts here to make sure we understand them.</p> <p>It says, "Since UEP assumed the management of USEM, in the fall of 2000, we</p>
<p style="text-align: center;">679</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. DOJ. 3 Q. Or some sort of marketing order 4 that the egg industry could apply for. Do 5 you know what I'm talking about? 6 A. I do not know what that is. 7 Q. Are you aware of the egg 8 industry ever seeking a government program 9 through Congress to manage supply?</p> <p>10 A. Now, the only time I can recall 11 this, and, again, you're trying to tap my 12 memory, and that is that -- this could have 13 been back as far as the 1970s, 1980s. I 14 don't know when it was. The industry was in 15 bad shape and there were some producers that 16 said, you know what we ought to do is be like 17 Canada who has a supply program with the 18 government. And so there was interest in 19 that we would never ever have a profitable 20 industry unless we found some way to have a 21 program like Canada.</p> <p>22 So there was a series of 23 meetings across the country soliciting 24 opinions from egg farmers. At the end, a 25 couple of things came to our -- one is that</p>	<p style="text-align: center;">681</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 sold five...sizable exports prior to the 3 recent sale?" 4 Do you see that? 5 A. Yes. 6 Q. Is that consistent with your 7 knowledge? 8 A. Again, without me looking at 9 it, but that sounds accurate. 10 Q. And then the next sentence 11 says, "We had calculated past export benefits 12 of being worth anywhere from as little as 6 13 cents per dozen to as much as 24 cents per 14 dozen during the period of delivery of each 15 export." 16 Do you see that? 17 A. The key point there is during 18 the period of delivery of each export. 19 Underline that. 20 Q. What does that mean? 21 A. That means that typically an 22 export would be taken for delivery over 23 generally no more than four weeks' period of 24 time. So during that period of the export 25 when we're trying to fill orders or trying to</p>

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<p style="text-align: center;">682</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 buy eggs and so forth, that there will be -- 3 like any market, stock market, whatever it 4 is, it is based upon bids and offers and, you 5 know, and sales and that kind of thing. So 6 during that period of time, as this is 7 happening, other than a couple of times I 8 think I recognize, that the market would go 9 up during that short period of time.</p> <p>10 Q. Okay. And so the 6 cents per 11 dozen and 24 cents per dozen is how much the 12 egg price in the market went up during that 13 period of time. Right?</p> <p>14 MS. LEVINE: Object to the form 15 of the question.</p> <p>16 THE WITNESS: I'm not an 17 economist on this. All I'm referring 18 to is what the Urner Barry quote was.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. That was my next question.</p> <p>21 A. Yes.</p> <p>22 Q. So you would look to Urner 23 Barry for that?</p> <p>24 A. Right.</p> <p>25 Q. I think you can put that aside.</p>	<p style="text-align: center;">684</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. LEVINE: Object to the form 3 of the question. 4 THE WITNESS: I'm sorry, say 5 that -- 6 BY MR. OLSON: 7 Q. For those uses -- for those 8 parts of what Mr. Bell provided that were 9 useful for UEP, UEP would rely on Mr. Bell's 10 statistical work? 11 MS. LEVINE: Object to the form 12 of the question. Calls for speculation. 13 THE WITNESS: He was one source 14 of information that we relied upon, 15 yes. 16 - - - 17 (Exhibit Gregory-81, 4/17/07 18 Letter, Bates NUCAL-08md2002-0000456 19 & NUCAL-08md2002-0000457, was marked 20 for identification.) 21 - - - 22 BY MR. OLSON: 23 Q. Let me hand you what we've 24 marked as Gregory-81. This is a document 25 Bates stamped NUCAL-08md2002-0000456 through</p>
<p style="text-align: center;">683</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 You know, I hate to be 3 backwards, but I forgot to ask you one 4 question on 79 about Mr. Bell's statistics. 5 A. Yes. 6 Q. What generally would UEP do 7 with the statistical information that Mr. 8 Bell provided? 9 A. Quite honestly, he would just 10 flood you with statistics to a point that it 11 was just overkill, and we would be selective 12 of what he had there as it relates to some 13 history of what the inventory was, what the 14 hatch was. So there was limited amount of 15 information that we were really interested 16 in. But he just -- he flooded you with 17 statistics. 18 Q. So he gave you more than you 19 needed but -- 20 A. Yes. 21 Q. -- certain parts of it were 22 useful for UEP? 23 A. Yes. 24 Q. And for those uses, UEP would 25 rely on Mr. Bell's statistics?</p>	<p style="text-align: center;">685</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 457. 3 Mr. Gregory, if you could just 4 give this a look and just then identify what 5 this type of document is? 6 A. Just for the record, would 7 you -- would you tell me what you said about 8 the dates? 9 Q. I haven't said anything about 10 the date. 11 A. I thought you said 2002, I'm 12 sorry. 13 Q. I was just reading this long 14 number at the bottom which is -- was stamped 15 on the document. 16 A. Okay. I'm sorry. I'm sorry. 17 I apologize. So I'm familiar with this. 18 Q. And what type of document is 19 this? 20 A. What this is, is after the 21 membership has approved an export, what we do 22 then, what U.S. Egg Marketers did then was 23 the total export was shared by the percentage 24 each member -- the percentage of hens each 25 member owned in relationship to what the</p>

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<p style="text-align: center;">686</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 total cooperative membership layers were. 3 And what this was -- what we -- we would 4 calculate that out and tell each member how 5 many cases they were obligated to fill. And 6 this letter is acknowledging that an export 7 has been taken and a year percentage share of 8 it is X number of cases. It's identifying 9 what kind of containers those eggs have to be 10 in, what kind of eggs they are. It is then 11 going forward and telling about what the 12 price of the sale was. It is then asking 13 them whether they are going to ship their own 14 eggs or whether they want UEP egg traders to 15 purchase those eggs for them.</p> <p>16 Q. This document is dated 17 April 17, 2007. Right?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall what egg prices 20 were doing in 2007?</p> <p>21 A. That is six years ago. No, I 22 do not know.</p> <p>23 Q. Do you recall that 2007 was a 24 year of record egg prices in the industry?</p> <p>25 A. We had come out of a disaster</p>	<p style="text-align: center;">688</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 of 2007 egg prices. Right?</p> <p>3 A. Yes.</p> <p>4 Q. Does it refresh your 5 recollection that it had been a year of 6 record egg prices?</p> <p>7 A. Yes.</p> <p>8 Q. And you provide some reasons 9 that you think were the reason for the 10 extremely good prices in the industry that 11 year. Right?</p> <p>12 A. Yes. Again, I'm not an 13 economist, but I'm giving you my opinion of 14 what I think some of those things were. But 15 I want to highlight in this that all of you 16 may be aware of the government's ethanol 17 policy and what happened as a result of 18 taking corn away from a food product. It 19 became an energy product and it drove up all 20 the cost of transportation and it drove up 21 the cost of all food products that were 22 derived from corn products.</p> <p>23 Q. Now, when you would put 24 something like this together for United 25 Voices, would you work on that by yourself or</p>
<p style="text-align: center;">687</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 situation in 2005 and 2006, and I think 3 because so many people were going broke or 4 were having to reduce their flock, sell hens 5 early, all of those kind of things, they had 6 lost so much money that I suspect, without 7 looking I don't know, but I suspect that 8 probably by this time things may have begun 9 to turn around.</p> <p>10 - - - 11 (Exhibit Gregory-82, 1/3/08 12 United Voices, Bates UE0619780 - 13 UE0619789, was marked for 14 identification.) 15 - - - 16 BY MR. OLSON: 17 Q. Let me hand you Gregory-82, see 18 if it refreshes your recollection. This is a 19 document Bates stamped UE0619780 through 789. 20 Mr. Gregory, just we're only 21 looking at a small portion. Can you identify 22 this as United Voices publication that you 23 edited dated January 3, 2008? 24 A. Yes. 25 Q. And the first page is a review</p>	<p style="text-align: center;">689</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 would others help you?</p> <p>3 A. No. I would say that these are 4 my opinions and my estimations and so forth.</p> <p>5 Q. And I take it that you would 6 make an effort to be as accurate as possible.</p> <p>7 MS. LEVINE: Object to the form 8 of the question.</p> <p>9 THE WITNESS: I would -- I think 10 that I would not purposely try to do 11 something that I thought was wrong.</p> <p>12 BY MR. OLSON: 13 Q. And the first two reasons you 14 give for the extremely good prices are these 15 reasons related to ethanol as you just 16 mentioned. Right?</p> <p>17 A. Yes.</p> <p>18 Q. And the third is that the 19 animal welfare guidelines had continued to 20 reduce the number of hens per house. That 21 was your belief at the time. Correct?</p> <p>22 A. But I want you to highlight, 23 underline, per house.</p> <p>24 Q. And you -- that was your belief 25 at the time. Correct?</p>

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<p style="text-align: center;">690</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. And your belief at the time was 4 that was at least one of the reasons for the 5 extremely good prices in the egg industry in 6 2007. Correct? 7 A. Yes, I want to go back and 8 point to you that 2005 and 2006 we overbuilt, 9 the industry nearly went bankrupt and by the 10 time we get in 2007, they have begun to make 11 adjustments. 12 I want to go back and say did I 13 think that was a part of it, yes. But I 14 think the major reason has always been an 15 irritant to me that I think ethanol is an 16 absolute stupid energy policy and it drove up 17 costs unbelievably. 18 Q. Now, you referred earlier to 19 the fact that you didn't think the USDA would 20 support a supply management program. Do you 21 recall saying that? 22 A. Yes, I did say that. 23 Q. What's the basis for your 24 belief that the USDA would not have supported 25 a supply management program?</p>	<p style="text-align: center;">692</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that. 3 BY MR. OLSON: 4 Q. You don't recall thinking about 5 that at all? 6 A. No. 7 Q. What is PEPA, P-E-P-A? 8 A. There was, maybe it still is, I 9 don't know, but, yeah, I think it is, it's an 10 organization in California and it's the 11 Pacific Egg and Poultry Association. 12 Q. And it held an annual 13 convention? 14 A. They have, yes. 15 Q. Would you go every year to the 16 annual convention? 17 A. No. 18 Q. From time to time you would go? 19 A. Only when I was invited. 20 - - - 21 (Exhibit Gregory-83, PowerPoint 22 presentation, Bates UE0533500 - 23 UE0533514, was marked for 24 identification.) 25 - - -</p>
<p style="text-align: center;">691</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. LEVINE: Objection. Calls 3 for complete speculation from this 4 witness. 5 THE WITNESS: We -- I don't 6 recall. Again, I'm telling you that I 7 don't know when it happened, I think 8 it was like 1970, 1980s. I don't know 9 what it was. A lot of those things 10 depended upon who was the secretary of 11 agriculture at the time. It depends 12 on what politics at the time is. And 13 so I don't know how I drew that 14 conclusion. But I do recall that we 15 drew the conclusion we didn't think 16 USDA would be receptive to that. 17 BY MR. OLSON: 18 Q. Did you consider in the 2000s 19 whether the USDA would be receptive to a 20 supply management program? 21 MS. SOUTHALL: Objection to the 22 form. 23 THE WITNESS: You would have to 24 show me a document of that because I 25 certainly don't recall anything like</p>	<p style="text-align: center;">693</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MR. OLSON: 3 Q. Let me hand you what we've 4 marked Gregory-83. 5 A. We're done with these two? 6 Q. Yes. 7 This is a document that's Bates 8 stamped UE0533500 through 514. I'll ask if 9 you can identify it as a presentation that 10 you gave at the PEPA annual convention in 11 March 2008? 12 A. The document says so. 13 Q. Have you had a chance to flip 14 through the document? 15 A. Just quickly. 16 Q. Can you identify this as the 17 presentation you gave at the PEPA annual 18 convention in 2008? 19 A. Yes. 20 Q. And you titled it an "Egg 21 Economies Report." Right? 22 A. Yes. 23 Q. Now, the slide one, first slide 24 of the presentation is titled, "Factors 25 Attributed To 2007 Egg Prices." Right?</p>

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<p style="text-align: right;">694</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. And the first one, first bullet 4 is this "Financial losses of 2005 and 2006" 5 that you referred to. Right? 6 A. Yes. 7 Q. You also referred to "Flock 8 Reduction (Better supply management)." "Do you see that? 10 A. Yes. 11 Q. What are you referring to 12 there? 13 A. After having suffered the 14 extreme financial losses of 2000 and -- 2005 15 and 2006, egg farmers were recognizing that 16 they could not continue to do that, and my 17 belief at that point in time that they were 18 doing a better job of managing their supply. 19 Q. The third bullet is "UEP 20 Certified Cage Space Requirements." Right? 21 A. Yes. 22 Q. And the fourth is "Prohibited 23 backfilling of cages." Right? 24 A. Yes. 25 Q. You're referring to the UEP</p>	<p style="text-align: right;">696</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 always that way. An egg -- and yet the egg 3 farmer has high demand periods at Easter, 4 Thanksgiving and Christmas. He needs to 5 maintain a flock size that can meet his 6 maximum demand. That then means that those 7 same chickens are still laying eggs in that 8 period between Easter and Labor Day, and he 9 doesn't have a market for all those eggs. 10 Sometimes it's as much as 20 percent 11 difference. So what I'm talking about here 12 is they're finally beginning to recognize 13 that this is a problem and they need to do 14 something better to manage that period of low 15 demand. 16 Q. Let's look at -- well, in fact, 17 on that point, UEP had suggested ways that 18 the industry could manage that period of 19 demand in 2007. Right? 20 A. I don't know when we did it, 21 but yes, I know we have done that. 22 Q. And in 2007 the producers did 23 what UEP had recommended? 24 MS. LEVINE: Object to the form. 25 Calls for speculation.</p>
<p style="text-align: right;">695</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 certified program prohibiting that. Right? 3 A. Yes. 4 Q. And then the next bullet is 5 "Exports." Right? 6 A. Yes. 7 Q. That's again the USEM exports. 8 Right? 9 A. Yes. 10 Q. Let's look at slide -- let's 11 look at the slide that discusses -- 12 A. Could I just clear up one more 13 thing there? 14 Q. Sure. 15 A. You fail to go over the reduced 16 egg supply during weeks between Easter and 17 Labor Day. 18 Q. Well, we can -- okay. We can't 19 go over everything in these documents, but if 20 you want to make a point about that -- 21 A. Right. But anyway, I think you 22 need to understand is that the poorest egg 23 demand period of the year is between Labor -- 24 is between Easter and Labor Day. Why, I 25 don't know but it is. Historically it's</p>	<p style="text-align: right;">697</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 THE WITNESS: I would like for 3 it to be noted that in all the 4 recommendations that we ever made, 5 they were recommendations and there 6 was no requirement that they had to do 7 this. It was voluntary. And there 8 was no penalty if you didn't. And 9 quite honestly, we were a complete 10 failure every time. 11 BY MR. OLSON: 12 Q. Except this time. Right? 13 Didn't you just say that you were a success 14 in that this time? 15 MR. MCKENNEY: Object to the 16 form. 17 THE WITNESS: No, I did not say 18 that. I said that the producers had 19 recognized after severe financial 20 losses in 2005, 2006, they were doing 21 a better job of managing supply. 22 BY MR. OLSON: 23 Q. Well, you also said that the 24 record egg prices in 2007 were partly due to 25 a reduced egg supply during this period</p>

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<p style="text-align: center;">698</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 between Easter and Labor Day. Right? 3 A. Right. What I said to you was 4 that I think after all this history, they had 5 finally began to recognize that this is not a 6 good time to be holding a whole lot of hens. 7 So I think they were doing something about 8 that.</p> <p>9 Q. And they were doing what UEP 10 had recommended. Right?</p> <p>11 MS. LEVINE: Object to the form 12 of the question. Calls for speculation.</p> <p>13 THE WITNESS: I have no 14 confirmation that they were doing 15 that. Because, again, I said to you 16 there is no -- there is -- it's a 17 voluntary -- it would have been 18 voluntary. We have no way of 19 following up to see if they did, and 20 there was no penalty if they did not.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Well, you talk to egg producers 23 all the time. Right?</p> <p>24 A. Quite a lot. I love those 25 people.</p>	<p style="text-align: center;">700</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 profitability of their industry, and 3 so, yes, they would want to engage in 4 that conversation at times, 5 particularly when things were in 6 terrible shape.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Let's turn to the slide that 9 ends in 05. This is a slide that you put 10 together. Right?</p> <p>11 A. Yes.</p> <p>12 Q. "UEP Certified Program - 13 Reduces Flock Size." Right?</p> <p>14 A. Yes.</p> <p>15 Q. So there's a success. Right?</p> <p>16 A. Yes, but you need to point out 17 that, again, there was houses that needed to 18 be built, new houses that needed to be built 19 to replace the hens they were losing in 20 existing houses, and the financial conditions 21 in 2005 and 2006 were so bad that they could 22 not afford to build the new houses that they 23 needed nor would the bankers loan them any 24 money because of that. So here we had a need 25 to build new housing and they couldn't afford</p>
<p style="text-align: center;">699</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. And you talk about what they 3 were doing with their production, didn't you? 4 MS. LEVINE: Object to the form 5 of the question. Calls for speculation.</p> <p>6 THE WITNESS: You know, we have 7 conversations about a lot of things, 8 and I can't recall, you know -- yes, 9 there would be times I would talk 10 about that.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Including how they were 13 managing their production, you would talk to 14 them about that?</p> <p>15 A. You know what, this is -- this 16 answer is going to surprise you, but very 17 seldom did we actually have those kind of 18 conversations.</p> <p>19 Q. But you're not suggesting that 20 you never had those types of conversations?</p> <p>21 MS. LEVINE: Object to the form 22 of the question.</p> <p>23 THE WITNESS: These are people 24 that are in the business and they have 25 a great deal of interest in the</p>	<p style="text-align: center;">701</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 to do so.</p> <p>3 Q. Let's talk about what's 4 discussed in this slide. I want to make sure 5 that we all understand it. So the first 6 bullet says, "Let's assume...producers were 7 providing cage space of 53.3 square inches 8 prior to 2002." Do you know where you got 9 that number from?</p> <p>10 A. No, I do not. I think that it 11 was generally thinking that there were some 12 people that were as low as I said before, 13 43 inches, some people at 48 inches. But I 14 think that the majority of people were, based 15 upon what we knew about cages and birds, we 16 believe that 53.3 was probably the majority.</p> <p>17 Q. Or maybe the average?</p> <p>18 A. No, I don't really think it was 19 the average.</p> <p>20 Q. The majority?</p> <p>21 A. I think it was probably the 22 majority.</p> <p>23 Q. Second bullet you say, "By 2007 24 this house would have been populated with 25 16.7% fewer hens when using the 'house</p>

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<p style="text-align: right;">702</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 averaging' space allowance." 3 A. Yes, but I want you to note 4 that that is talking about per house, that 5 house. 6 Q. Right. I got that. 7 A. We're not talking about a 8 national figure. 9 Q. My question is actually more 10 about the next one. It says, "Layer houses 11 filled in the fall of 2008 and thereafter 12 will see further reduction by 3.7% when using 13 the 'house averaging' space allowance." What 14 does that mean? 15 A. It means that when you move, I 16 don't remember the dates, but when you move 17 from 64 to 67 square inches per bird, there 18 will be -- you know, you're asking me to look 19 back on it, but -- so when we move from the 20 64 to the 67 square inches, that particular 21 house, those existing houses are going to 22 have 3.7 less, percent less birds in the 23 houses. 24 Q. And then the next bullet, I 25 won't read it all, but is basically saying</p>	<p style="text-align: right;">704</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 a major reason we destroyed good prices." 3 Right? 4 A. Right. 5 Q. That was your view at the time. 6 Right? 7 A. Yes. 8 Q. And the third bullet says, "UEP 9 Certified program then develops policy to 10 prohibit backfilling cages." Right? 11 A. Yes. 12 Q. True statement? 13 A. Yes. 14 Q. And then you said, "The market 15 now reflects the benefits of that policy." 16 And that was true as well, right? 17 A. Yes, but you're trying to imply 18 that backfilling was only done as a supply. 19 That was not the reason, this is what I'm 20 trying to say, is that -- is that farmers, 21 because there's no prohibition against it, 22 they were doing a practice that they had 23 never done before and now they're making 24 profits and they think, oh, if I can just put 25 more chickens in that house and backfill</p>
<p style="text-align: right;">703</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that under the certified program, we would 3 see further reductions in late 2008 and 2009 4 by approximately 8.9 million hens. Right? 5 A. Yes. 6 Q. Now, let's look at the next 7 slide, "Backfilling Cages." 8 A. The next slide? 9 Q. Yes. You put this slide 10 together, too. Correct? 11 A. Yes. 12 Q. First bullet says, "From the 13 summer of 2003 through the spring of 2004, 14 the industry enjoyed very profitable prices." 15 Right? 16 A. Yes. 17 Q. True statement? 18 A. I'd have to review that, but it 19 must have been, I wrote it. 20 Q. And the next bullet says, "To 21 take advantage of good prices - producers 22 elected to back fill empty cages." Right? 23 A. Yes. 24 Q. "This added several million 25 hens to the nation's flock inventory and was</p>	<p style="text-align: right;">705</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 those cages, I can maximize our profits. 3 When, in fact, what it did, it destroyed, but 4 most of all, it was jeopardizing the intent 5 of the UEP certified program. 6 Q. Well, you suggest -- I'm not 7 trying to imply anything. I basically just 8 read what you had written. 9 A. I know, but -- 10 Q. Is there anything on this 11 page -- 12 A. There was nothing but -- 13 Q. Hold on. Let me ask the 14 question. 15 Is there anything on this page 16 or anywhere in this presentation that you 17 gave at the PEPA annual convention that 18 suggests that the problem with backfilling 19 had anything at all to do with animal 20 welfare? 21 MS. LEVINE: Object to the form 22 of the question. 23 THE WITNESS: You're trying to 24 take my words and imply that it was a 25 supply problem, and I'm saying to you,</p>

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<p style="text-align: right;">706</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I'm only reporting what is going on 3 and I object to what you're trying 4 to -- trying to put words into this 5 that this was not the intention.</p> <p>6 BY MR. OLSON: 7 Q. Mr. Gregory, is there anything 8 either on this slide or anywhere in the 9 presentation that suggests that the problem 10 with producers backfilling had anything at 11 all to do with animal welfare? 12 A. Again, I would say to you, yes, 13 that's true, but you are misreading it from 14 -- different from what this is really all 15 about. 16 Q. What this says is that the 17 problem with backfilling is it destroyed good 18 prices. Right? That's what it says? 19 A. You know what, you've asked 20 that question enough times, I've tried to 21 answer it enough times, why don't you move 22 on. 23 Q. And the prohibition of 24 backfilling, that was another success. 25 Right?</p>	<p style="text-align: right;">708</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. You can do that again if that's 3 what you -- if that's -- what number is that? 4 Q. 82, this is your United Voices, 5 your review of 2007 egg prices where you say, 6 "As we come to the...year of record egg 7 prices..." and later you refer to them as 8 extremely good prices. 9 A. If that's what it says, that's 10 what it says. 11 Q. So when backfilling 12 succeeded -- the prohibition of backfilling 13 succeeded -- 14 A. Let me ask you a question. Why 15 in hell are you so concerned about 16 backfilling when what we're talking about is 17 animal welfare, trying to improve welfare of 18 animals? Are you trying to discredit -- are 19 you trying to -- I mean, I just -- this blows 20 my mind how you nitpick something like that 21 when all we're trying to do is improve the 22 welfare of animals. 23 Q. There are two reasons why I'm 24 spending time on this. 25 A. Because backfilling had nothing</p>
<p style="text-align: right;">707</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. No. No. That doesn't -- It 3 was a success in the fact that it was to 4 provide for a more humane animal welfare 5 program and to meet the intent of what these 6 space guidelines were. 7 Q. You suggested that for all UEP 8 did to try to help the industry manage 9 supply, it was never successful, but, in 10 fact, what you told PEPA in 2008 was that UEP 11 stepping up and prohibiting backfilling was a 12 major reason that the market had benefited in 13 2007. Right? 14 MS. LEVINE: Object to the form 15 of the question. 16 THE WITNESS: No, I don't think 17 it says that. It says the market now 18 reflects the benefit of that policy. 19 BY MR. OLSON: 20 Q. And the market reflected it by 21 record egg prices. Correct? 22 A. I don't know whether it was 23 record egg prices then or not. 24 Q. Well, let's look back then at 25 Exhibit 82.</p>	<p style="text-align: right;">709</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 to do with the supply/demand program. 3 Q. There are two reasons why I'm 4 spending time with this. First is you 5 suggested that all the work UEP did to help 6 manage supply was never successful. And it 7 seems to me that's directly contradictory to 8 what you say -- what you said at this -- 9 A. Because backfilling is not a 10 supply/demand recommendation is what I'm 11 saying to you. 12 Q. Is that what you told the PEPA 13 annual convention in 2008? 14 A. I did not tell the PEPA people 15 that this was a supply/demand recommendation 16 and that it responded to a supply/demand 17 recommendation. Nowhere does that say that. 18 Q. Did you tell the PEPA annual 19 convention that prohibiting backfilling had 20 anything at all to do with animal welfare? 21 MR. MCKENNEY: Objection. Asked 22 and answered. 23 THE WITNESS: I don't recall. 24 I'm tired of the question. I don't 25 recall.</p>

17 (Pages 706 to 709)

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<p style="text-align: center;">710</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MR. OLSON: 3 Q. You can put that aside. 4 - - - 5 (Exhibit Gregory-84, 7/21/08 6 E-mail with attachment, Bates 7 UE0354878 - UE0354882, was marked for 8 identification.) 9 - - - 10 BY MR. OLSON: 11 Q. Let me hand you what's marked 12 Gregory-84. This is Bates stamped UE0354878 13 through 882. Why don't you briefly scan the 14 document, let us know when you're done. 15 A. (Reviewing document.) 16 I've scanned it. 17 Q. All right. Can you identify 18 the cover e-mail as one that you sent on 19 July 28 -- 21, 2008? 20 A. Yes, I do. 21 Q. And you attach a document that 22 you had written. Correct? 23 A. Yes. 24 Q. Now, this document that you had 25 written concerns the fact that Walmart had</p>	<p style="text-align: center;">712</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 first became an issue because of some 3 of the egg suppliers to Walmart were 4 now competing against something they 5 knew did not know much of the -- they 6 had very little information about. 7 BY MR. OLSON: 8 Q. You referred to phone calls you 9 had received from egg farmers? 10 A. Yes. 11 Q. What do you recall about who 12 called you? 13 A. You want me to name all the 14 people that called me? 15 Q. About this topic. 16 A. That's what I'm saying, you 17 want me to name all the people that called 18 me? 19 Q. How many -- about this Walmart 20 topic? 21 A. Yes. 22 Q. How many was it approximately? 23 I mean, are we talking dozens? 24 A. Oh, God. See, now this is 25 where I have a problem. If I say 24 and then</p>
<p style="text-align: center;">711</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 apparently been considering purchasing eggs 3 that were certified under this Process 4 Verified Program. Right? 5 A. I don't believe the word is 6 certified. I believe the word is verified. 7 Q. That's what I meant to say. 8 That were verified under the Process Verified 9 Program. Right? 10 A. Yes. 11 Q. And how did you learn that? 12 A. I probably receive more irate 13 phone calls from egg farmers across the 14 country on this subject than anything I have 15 ever received from both Walmart suppliers as 16 well as nonsuppliers. And so I learned about 17 it thataway. 18 Q. So some UEP members called you 19 and told you that -- that Walmart was 20 considering purchasing eggs under the Process 21 Verified Program? 22 MS. LEVINE: Object to the form 23 of the question. Mischaracterizes the 24 witness' answer. Asked and answered. 25 THE WITNESS: As I recall, this</p>	<p style="text-align: center;">713</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 it turns out later it's 25, you know, I'm 3 not -- 4 MS. LEVINE: I think on this one 5 Mr. Olson just wants an approximation. 6 BY MR. OLSON: 7 Q. Are we talking one or two or 8 are we talking more than 20? 9 A. No, no, no. I must have got 20 10 or 30 calls about this. 11 Q. Because Walmart is a -- is 12 probably the major customer of UEP members? 13 A. Yes. Yes. 14 Q. And that includes -- 15 A. Well, they are the biggest in 16 the retail industry. 17 Q. And they're a big customer not 18 just for UEP certified egg producers but 19 potentially for other UEP members as well. 20 Right? 21 MS. LEVINE: Object to the form 22 of the question. Calls for speculation. 23 THE WITNESS: Walmart was very 24 supportive of the work that UEP and 25 FMI had done. In fact, Walmart was</p>

18 (Pages 710 to 713)

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<p style="text-align: center;">714</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 the first company to commit themselves 3 that they would only buy UEP certified 4 eggs. And that had been their policy. 5 They had written letters when we had 6 discussions about this 100 percent 7 rule. They had written letters to us 8 warning UEP to main that 100 percent 9 rule. Now some years have passed and 10 a company or individual has called on 11 Walmart, and they are supposedly 12 marketing a EU -- I'm sorry, a USDA 13 animal welfare program and as such 14 presenting it as superior to the UEP 15 certified program, and in the process 16 of it, making false statements about 17 the UEP certified program.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Who is this -- 20 A. By this time, at Walmart like 21 maybe it is at many retailers, I don't know, 22 their egg buyers don't -- they're not egg 23 buyers for their life, they will change from 24 one commodity procurement to another one 25 every few years. So by this time they have</p>	<p style="text-align: center;">716</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 on Walmart and that you say was making false 3 statements to Walmart? 4 A. At that point, it would be -- 5 on my part it would be speculation who the 6 individual was. I have -- you know, I have a 7 feeling who it might be, but I don't know 8 that, so I shouldn't say so. And -- but I 9 know the company that was calling on Walmart. 10 Q. What company was that? 11 A. That was Sparboe. 12 Q. And do you have any firsthand 13 knowledge of what Sparboe said to Walmart 14 about its program? 15 A. It told Walmart that this was a 16 USDA animal welfare program. 17 Q. What's the basis for your 18 knowledge about what Sparboe told Walmart? 19 A. In the conversation with this 20 gentleman Tony. 21 Q. So -- and that conversation 22 occurred before or after you drafted this 23 letter to Walmart? 24 A. You know, I think -- you know, 25 I'm sorry that I don't remember, but it seems</p>
<p style="text-align: center;">715</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 new people in their egg buying that were -- 3 that I was not familiar with. So after a 4 series of many phone calls saying, Gene, you 5 have got to call Walmart and you've got to 6 defend the UEP certified program because 7 there's things being said about UEP certified 8 that is false and you need to call them and 9 make sure that they understand what UEP 10 certified is. And so reluctantly finally I 11 made a phone call and it was -- I was given a 12 name of a particular lady to call. I made 13 that call. And she was not available, and 14 shortly thereafter a gentleman named Tony 15 called me. 16 Q. Now, my understanding was that 17 UEP policy forbade UEP staff from contacting 18 the customers of UEP members? 19 A. That is not totally true 20 because when you have your members asking you 21 to call a retailer to clear up a 22 misunderstanding or to confirm something, 23 then we followed up on those member requests. 24 Q. Who is this individual or 25 company that you referred to that had called</p>	<p style="text-align: center;">717</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 to me like at some -- it seems to me like, 3 and don't hold me up on this because I'm not 4 sure about my memory on this, but it seems to 5 me like at some time after that, that Chad 6 was invited to go down and meet with the 7 Walmart people. And I think what I'm doing 8 here is trying to give him some history of 9 what this is so that he can do so. That's my 10 recollection, but I'm not sure I'm right. 11 Q. At the time you called Walmart, 12 you had no information about what Sparboe had 13 supposedly told Walmart that was false. 14 Right? 15 MS. LEVINE: Objection to the 16 form of the question. 17 THE WITNESS: What I had been 18 told by the phone calls, you know, is 19 that the UEP certified program does 20 not require a farmer to be 100 21 percent, that it -- that a non-UEP 22 certified company could buy UEP 23 certified eggs and sell them to 24 Walmart. That -- I don't know all 25 what it was. That the Process</p>

19 (Pages 714 to 717)

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<p style="text-align: right;">718</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Verified Program was a superior 3 program, the UEP's program for 4 whatever reasons, I don't recall all 5 of this stuff. 6 BY MR. OLSON: 7 Q. How do these people calling you 8 know what Sparboe had told Walmart? 9 MS. LEVINE: Objection. Calls 10 for speculation. 11 THE WITNESS: Again, I'm having 12 to recall, but it happened to be, as I 13 understand, that the people that were 14 egg suppliers to Walmart now were 15 being challenged to meet a new price 16 to -- in order to maintain their 17 business because they were -- 18 otherwise they were going to change to 19 this program and they didn't know what 20 program they were competing with 21 because they couldn't find out any 22 information about that program. And 23 so then, you know, they began talking 24 amongst themselves obviously about 25 what's going on here, and so, you</p>	<p style="text-align: right;">720</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 some false statements about the UEP 3 certified program and made some 4 statements that maybe is inaccurate 5 about the USDA program, and so I've 6 been asked to call you and try to 7 clear up any misunderstanding. 8 BY MR. OLSON: 9 Q. And at the time of that 10 conversation, you had no credible basis for 11 making the accusation that Sparboe had made 12 false statements about the UEP certified 13 program, did you? 14 MS. LEVINE: Objection to the 15 form of the question. Calls for 16 speculation. Asked and answered 17 several times. Mischaracterizes what 18 Mr. Gregory testified to. 19 THE WITNESS: When I talked to 20 this gentleman named Tony, I never 21 identified the name of Sparboe or any 22 company name. I never entered into 23 any conversations about who they 24 were buying with. My -- again, I 25 state that my call was that I had</p>
<p style="text-align: right;">719</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 know, they call me saying, Gene, 3 you've got to do something to protect 4 the credibility of UEP's program. 5 BY MR. OLSON: 6 Q. But you had no credible 7 information that Sparboe was spreading false 8 information to Walmart, did you -- 9 MS. LEVINE: Objection. 10 BY MR. OLSON: 11 Q. -- before you contacted Walmart? 12 MS. LEVINE: Objection to the 13 form of the question. Asked and 14 answered. Mischaracterizes what 15 Mr. Gregory just testified to. 16 THE WITNESS: My call to -- when 17 I eventually received a call back from 18 this gentleman named Tony is that I 19 explained to him right up front is 20 that I'm not calling you to have a 21 discussion about who you do business 22 or that is not the intent of this 23 call. You can do business with 24 anybody you want to. It is my 25 understanding that someone has made</p>	<p style="text-align: right;">721</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 heard that someone was 3 mischaracterizing our program. 4 BY MR. OLSON: 5 Q. And what was the basis? 6 A. And Walmart had long been a 7 supporter and knew about all this and 8 obviously they were new people and maybe they 9 didn't know all the details. 10 Q. So someone calls you on the 11 phone and says I heard Sparboe said to 12 Walmart things that were not true, and then 13 you picked up the phone and called Walmart? 14 A. I don't think -- say -- I'm 15 sorry, say that again. 16 Q. Some UEP member calls you on 17 the phone and says I had heard from somewhere 18 that Sparboe said some false information to 19 Walmart. And that was sufficient for you to 20 pick up the phone and tell Walmart that -- 21 and call Walmart and say you had heard that 22 someone was spreading false information? 23 MS. LEVINE: Objection to the 24 form of the question. Mischaracterizes 25 his last ten minutes of testimony.</p>

20 (Pages 718 to 721)

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<p style="text-align: center;">722</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MR. OLSON: 3 Q. Am I missing something? Is 4 there something -- 5 A. You tried to say some 6 individual called you. And I said earlier 7 that I probably had more irate phone calls 8 over this than anything. And I don't know 9 how many, probably 20 or 30 calls I had about 10 this. By this time, it's my duty to educate 11 and make sure what -- there is a clear 12 understanding that the UEP certified program, 13 that it would be unfair for someone to 14 mischaracterize it. 15 Q. I've asked it a dozen different 16 ways. I'm probably asking it the wrong way, 17 but let me just try it one more time. I'm 18 just trying to understand what was the basis 19 for you making an assertion to anyone that 20 you believe that Sparboe or any other company 21 was spreading false information to Walmart. 22 What was the basis for that? 23 A. It was based upon phone calls 24 that I had received from numerous producers. 25 Q. How did those people know what</p>	<p style="text-align: center;">724</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 do I try to answer it? There are egg 3 suppliers to Walmart. 4 BY MR. OLSON: 5 Q. How do those people know what 6 Sparboe said to Walmart, that's what I don't 7 understand? 8 MR. BARNES: You have to ask 9 them. 10 MS. LEVINE: You're going to 11 have to take their depositions. 12 BY MR. OLSON: 13 Q. So you don't know either. Is 14 that the answer, you don't know? 15 MS. LEVINE: Mr. Olson, this is 16 a long time ago. This witness really 17 has spent a half an hour trying to 18 answer your questions fully. 19 MR. OLSON: I'm ignoring all 20 these improper objections, but please 21 don't do any more of that testifying. 22 MS. LEVINE: It's not improper. 23 You spent 30 minutes on this line of 24 questioning. If Mr. Gregory has 25 anything else to add, you can ask him.</p>
<p style="text-align: center;">723</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Sparboe had said? 3 MS. SOUTHALL: Objection to 4 form. 5 MS. LEVINE: Calls for 6 speculation. 7 MR. OLSON: What's the 8 objection? 9 MS. SOUTHALL: It calls for 10 speculation. He's testified to this 11 multiple times. 12 MR. OLSON: It calls for 13 speculation. Okay. Thanks. 14 BY MR. OLSON: 15 Q. What was the basis to your 16 understanding? What was your understanding 17 of the basis of these people who called you 18 on the phone knowing what Sparboe had said to 19 Walmart? 20 MS. LEVINE: Objection to the 21 form of the question. Calls for 22 speculation. It mischaracterizes what 23 Mr. Gregory described what he said to 24 Walmart. 25 THE WITNESS: So how many times</p>	<p style="text-align: center;">725</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MR. OLSON: 3 Q. Did you know the basis of these 4 accusations that were being made in these 5 phone calls to you? 6 MS. LEVINE: Objection. Asked 7 and answered. 8 BY MR. OLSON: 9 Q. Did these people say I was in a 10 room with Sparboe when they said something 11 false? 12 A. No. 13 Q. So did you know the basis of 14 them saying that Sparboe was making false 15 statements to Walmart? 16 MS. LEVINE: Objection. Asked 17 and answered. 18 THE WITNESS: You know, Steig, 19 sometimes I just get irritated with 20 you because you are personally 21 attacking me. You are personally 22 accusing me, and I don't understand 23 why you're doing so. 24 BY MR. OLSON: 25 Q. Well, you're the one that</p>

21 (Pages 722 to 725)

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<p style="text-align: center;">726</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 accused Sparboe of making false statements to 3 Walmart. 4 A. I did not. 5 MS. LEVINE: That is 6 completely -- 7 THE WITNESS: I said I did not. 8 How many times do I have to tell you 9 that? I never ever mentioned 10 Sparboe's name.</p> <p>11 BY MR. OLSON: 12 Q. So you, Mr. Gregory, don't have 13 any basis for believing that Sparboe made 14 false statements to Walmart. Is that right?</p> <p>15 MS. LEVINE: Objection to form 16 of the question. Mischaracterizes the 17 witness' last 30 minutes of testimony.</p> <p>18 THE WITNESS: You know, I have 19 to --</p> <p>20 MS. LEVINE: You want to 21 continue on your time and ask him, go 22 ahead.</p> <p>23 THE WITNESS: You know, I have 24 to trust the people that's making 25 calls to me that are irritated about</p>	<p style="text-align: center;">728</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Yes. I'll ask the question one 3 more time. If it's as easy as everyone on 4 this side of the table is suggesting, if you 5 answered it eight times, it's going to be 6 easy for you to answer again. 7 A. Why don't you just get to the 8 bottom line of what your -- 9 Q. Here's the question. 10 MS. LEVINE: He's going to ask 11 the question again. You can answer 12 it --</p> <p>13 BY MR. OLSON: 14 Q. Mr. Gregory -- 15 MS. LEVINE: -- again.</p> <p>16 BY MR. OLSON: 17 Q. Mr. Gregory, when you contacted 18 Walmart, did you have any basis for asserting 19 that Sparboe had made false statements to 20 Walmart?</p> <p>21 MS. LEVINE: Objection to the 22 form of the question. Asked and 23 answered for the last 35 minutes. If 24 this witness has anything else to 25 answer, Mr. Gregory, you can add to</p>
<p style="text-align: center;">727</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 this situation. And so that's my 3 source of the reason why I made that 4 call. It was not about who Walmart is 5 going to do business with. It's about 6 making sure that it is fully 7 understood about what the UEP 8 certified program is.</p> <p>9 BY MR. OLSON: 10 Q. When you contacted Walmart, did 11 you have any basis for believing that Sparboe 12 had made false statements to Walmart? Yes or 13 no?</p> <p>14 MS. LEVINE: Mr. Olson, you 15 really have asked this for 35 minutes. 16 This is a fact deposition to find out 17 what the witness knows. This is not a 18 time to interrogate him. You'll have 19 trial. Really. He's answered that 20 question about eight times if you look 21 at your record.</p> <p>22 BY MR. OLSON: 23 Q. It's a yes or no question. 24 A. You're looking at me like you 25 want an answer.</p>	<p style="text-align: center;">729</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 the record.</p> <p>3 THE WITNESS: I will again say, 4 based upon numerous phone calls from 5 our members telling me that what 6 Sparboe was telling Walmart was a 7 misrepresentation of the UEP certified 8 program.</p> <p>9 BY MR. OLSON: 10 Q. And did you know the basis for 11 these people in the phone call saying what 12 Sparboe had told Walmart?</p> <p>13 MS. LEVINE: Objection to the 14 form. Asked and answered. I think 15 the record is very clear on everything 16 Mr. Gregory has said. If you want to 17 say something in addition, you 18 certainly can, sir.</p> <p>19 THE WITNESS: I don't know how 20 to answer your question. I tried 21 every way in the world, but I don't 22 know how to answer it. I'm not trying 23 to be evasive. I'm just trying to 24 tell you where the phone calls came 25 for me and my instructions to make</p>

22 (Pages 726 to 729)

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<p style="text-align: right;">730</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 phone call -- a phone call to Walmart. 3 BY MR. OLSON: 4 Q. Were these people in the room 5 with Walmart, had they seen something written 6 by Sparboe that was false? 7 MS. LEVINE: Objection. 8 BY MR. OLSON: 9 Q. How did these people know what 10 Sparboe was saying to Walmart? 11 MS. LEVINE: Objection. Calls 12 for speculation. Asked and answered. 13 If you can answer any additional 14 information to Mr. Olson, you may. 15 Otherwise, you can stand on your 16 answer. 17 THE WITNESS: These people are 18 suppliers to Walmart. I am assuming 19 that Walmart has now called their 20 suppliers and said that you're going 21 to have to lower your price if you 22 want to keep my business because 23 otherwise I'm going to change to this 24 program. That's what I recall. 25 BY MR. OLSON:</p>	<p style="text-align: right;">732</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 question is, this is our program, it looks 3 like somebody has taken things from us and 4 not -- without having asked our permission to 5 do so. 6 Q. And there was some questions 7 you drafted to be asked Walmart. Right? 8 A. Yes. 9 Q. And one of them is, "Why would 10 Wal-Mart accept a secret program that is not 11 supported by an industry?" 12 A. The reason being is that it 13 would be nice if the egg suppliers that are 14 current suppliers to Walmart had a way of 15 knowing what they're competing against and in 16 trying to find things and trying to go 17 through USDA to find out what this program 18 that supposedly was touted and reported as a 19 USDA program, in our Freedom of Information 20 Act we tried to find out what that was, and 21 so much of it was redacted that we could not 22 learn very much about it other than those 23 things that they had taken out of UEP's 24 program. 25 Q. You can put that aside.</p>
<p style="text-align: right;">731</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. All right. So you draft this 3 as something for Mr. Gregory to use 4 potentially when he has discussions with 5 Walmart, Chad Gregory that is? 6 A. I'm trying to tell him some 7 background of what's going on here. 8 Q. So if you look at the page that 9 ends in 81 of what you drafted, there's a 10 question for example, "Is it possible that 11 the copyrighted UEP animal husbandry 12 guidelines have been stolen?" 13 Do you see that? 14 A. Yes. 15 Q. So you were comfortable 16 suggesting that someone was out there 17 stealing the UEP guidelines? 18 A. When I saw the copy of this, I 19 can't remember the exact name of the program 20 that was being used as a competition, and you 21 look at it, there is an awful lot of key 22 information in that program that is exactly 23 what's in UEP's program. And they have 24 selected things out of the UEP certified 25 program to include in their program. So my</p>	<p style="text-align: right;">733</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 - - - 3 (Exhibit Gregory-85, 9/24/08 4 E-mail, Bates NUCAL-08md2002-0056239 & 5 NUCAL-08md2002-0056240, was marked for 6 identification.) 7 - - - 8 BY MR. OLSON: 9 Q. Let me hand you what's been 10 marked Gregory-85. This is a two-page 11 document Bates stamped NUCAL-08md2002-0056239 12 through 40. 13 I'll ask if you can identify it 14 as an e-mail that you wrote on September 24, 15 2008? 16 A. I've read it. 17 Q. This is an e-mail that you 18 wrote. Correct? 19 A. Yes. 20 Q. It concerns a Wall Street 21 Journal article? 22 A. Yes. 23 Q. A reporter named John Wilke? 24 A. Yes. 25 Q. At the end of your e-mail</p>

23 (Pages 730 to 733)

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<p style="text-align: center;">734</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 towards the end, you -- at the bottom of the 3 first page you say, "Mr. Wilke...", in the 4 article, "...says a number of times that he 5 got information from UEP newsletters and 6 letters to members." 7 Do you see that? 8 A. Yes. 9 Q. You say, "Why any member would 10 share private information with a reporter is 11 beyond my understanding." 12 Do you see that? 13 A. Yes. 14 Q. And you're referring to those 15 newsletters and those letters. Right? 16 A. Yes, although I do not believe 17 that's where he got the information. 18 Q. All right. So you -- 19 A. You brought this subject up. 20 Q. I'm at the end of -- I'm at the 21 end of my time. 22 A. You brought the subject up. 23 Q. Well, I'm at the end of my 24 time, so -- 25 A. I'd like to tell the setup deal</p>	<p style="text-align: center;">736</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 record. 3 MS. LEVINE: I just want to say 4 we're back on the record and that the 5 time for this deposition is 14 hours 6 for all of the MDL plaintiffs and then 7 the defendants have an opportunity, 8 but if you want to reserve anything 9 for redirect, please work that into 10 your 14 hours. 11 MS. CAIN-MANNIX: We'll talk 12 about that later. How much time is 13 left? 14 MR. OLSON: We've gone 11:39. 15 - - - 16 EXAMINATION 17 - - - 18 BY MS. CAIN-MANNIX: 19 Q. Good morning, Mr. Gregory. 20 A. Good morning. 21 Q. My name is Moira Cain-Mannix. 22 I have a few questions for you. 23 In approximately December of 24 2003, did UEP implement a licensing program? 25 A. We implemented a licensing</p>
<p style="text-align: center;">735</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 here if I could. 3 MS. LEVINE: We can ask you that 4 question. 5 MR. OLSON: At this point, I'm 6 going to thank you for your time. I'm 7 going to pass the witness. Obviously 8 I reserve the right to do any follow 9 up after examination is conducted on 10 this side of the table. And we do 11 anticipate that that will happen. So 12 let's take a break. 13 THE WITNESS: But Mr. -- 14 MS. LEVINE: We'll have to see 15 about timing on your 14 hours. 16 VIDEOGRAPHER: The time is 17 approximately 9:32 a.m. This ends 18 tape one, volume three. We're now off 19 the record. 20 - - - 21 (A recess was taken.) 22 - - - 23 VIDEOGRAPHER: The time is 24 9:44 a.m. This begins tape two, 25 volume three. We're back on the</p>	<p style="text-align: center;">737</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 program, but I would need some document to 3 verify the date. 4 Q. I'll show you what we will mark 5 as Exhibit 86 to your deposition. 6 A. Okay. 7 - - - 8 (Exhibit Gregory-86, 12/30/03 9 United Voices, Bates MOARK0006744 - 10 MOARK0006756, was marked for 11 identification.) 12 - - - 13 BY MS. CAIN-MANNIX: 14 Q. Could you identify this 15 document for the record? 16 A. Yes. 17 MS. SUMNER: Read the Bates 18 number into the record for the people 19 on the phone. 20 MS. CAIN-MANNIX: Sure. It's 21 MOARK -- I have an incomplete copy. 22 MOARK0006744 through 6756. 23 BY MS. CAIN-MANNIX: 24 Q. My questions really are only 25 focusing on the first two pages.</p>

24 (Pages 734 to 737)

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<p style="text-align: center;">738</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Okay. 3 Q. Is this a document you created? 4 A. Yes. 5 Q. In December of 2003? 6 A. Yes. 7 Q. I'd like to focus your 8 attention at the bottom of page 1 and it 9 carries over onto the second page. 10 A. Okay. 11 Q. "UEP's board has approved the 12 marketing of Animal Care Certified eggs by 13 non-certified producers and/or marketers 14 providing they sign a License and Marketing 15 Agreement, pay an annual license fee and file 16 Monthly Compliance Reports. The reporting 17 forms and agreements will be provided to all 18 interested marketers soon after January 1, 19 2004." 20 Does this refresh your 21 recollection about the licensing program? 22 A. Yes. Yes. 23 Q. This program at this time was 24 available to producers and/or marketers, 25 non-certified producers and/or marketers?</p>	<p style="text-align: center;">740</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Mr. Gregory? 3 A. Yes. 4 Q. And what is it? 5 A. It's a letter to Chuck Elste of 6 Nu-Cal Foods. 7 Q. Dated April 15 of 2004? 8 A. Yes. 9 Q. It's regarding the licensing 10 program. Correct? 11 A. Yes. 12 Q. It's asking Nu-Cal Foods if it 13 wants to become a member or licensed 14 marketer. Correct? 15 A. Yes. 16 Q. You tell them what they need to 17 do to become a licensed marketer. Is that 18 correct? 19 A. I think that's what the letter 20 is saying, yes. 21 Q. And the four things they need 22 to do are sign and return the enclosed 23 license agreement? 24 A. Yes. 25 Q. Pay an annual fee, sign and</p>
<p style="text-align: center;">739</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. From that point forward, yes. 3 Q. Did you have to be a member of 4 UEP or UEA to obtain a license? 5 A. No. 6 Q. Did you send the reporting 7 forms and agreements soon after January 1, 8 2004? 9 A. I don't recall, but this says 10 that I will be doing so or we will be doing 11 so. 12 Q. I'll show you what we'll mark 13 as Exhibit 87 to your deposition. 14 A. Are you done with this? 15 Q. Yes, you can put that away. 16 Thanks. 17 - - - 18 (Exhibit Gregory-87, 4/15/04 19 Letter, Bates NUCAL-08md2002-0001653, 20 was marked for identification.) 21 - - - 22 BY MS. CAIN-MANNIX: 23 Q. This is NUCAL-08md2002-0001653. 24 A. Yes. 25 Q. Can you identify this document,</p>	<p style="text-align: center;">741</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 return the enclosed marketing agreement? 3 A. Yes. 4 Q. And sign and return the 5 enclosed dispute resolution? 6 A. Yes. 7 Q. And those documents are 8 enclosed behind your letter. Is that 9 correct? 10 A. Yes. 11 Q. There's also a copy of the 12 check from Nu-Cal Foods which seems to 13 indicate that they paid some kind of a 14 licensing fee? 15 A. Yes. 16 Q. You can put that document 17 aside. 18 I'm going to show you what 19 we'll mark as Exhibit 88 to your deposition. 20 - - - 21 (Exhibit Gregory-88, 6/1/04 22 Letter, Bates NUCAL-08md2002-0001440, 23 was marked for identification.) 24 - - - 25 BY MS. CAIN-MANNIX:</p>

25 (Pages 738 to 741)

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<p style="text-align: center;">742</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. For the record, this is 3 NUCAL-08md2002-0001440. Can you identify 4 this document? 5 A. Yes. 6 Q. And this is a letter from you 7 dated June 1, 2004, again, to Mr. Chuck 8 Elste? 9 A. Yes. 10 Q. And it's a follow up to your 11 last letter. And they're sending in the 12 licensing agreement and other documents. Is 13 that correct? 14 A. Yes. 15 Q. At this point, now that they 16 are licensed marketers, you sent them a 17 number of enclosures? 18 A. Yes. 19 Q. "A copy of your signed license 20 agreement," "Monthly reporting forms," "The 21 audit guidelines as written by USDA," "The 22 audit score sheet to be used by USDA," "The 23 list of USDA auditors," "Letter from 24 USDA-FSIS and USDA-AMS regarding the use of 25 the Animal Care Certified logo," and a</p>	<p style="text-align: center;">744</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 cooperative of egg farmers. And their 3 individual egg farmers have -- are now 4 UEP certified companies and they can 5 sell their eggs as UEP certified eggs. 6 I think, I'm trying to remember now, I 7 think Chuck Elste requested to have a 8 license agreement because they are 9 doing business with customers that 10 recognize the name Nu-Cal Foods. They 11 don't recognize the name of JS West or 12 Sunrise Farms, so forth. So what he's 13 wanting to do is to have a way by 14 which he can communicate to his 15 customers that Nu-Cal has a license to 16 market these eggs. I think that's -- 17 this is a little bit different than 18 what a normal non-certified licensor 19 would be. 20 BY MS. CAIN-MANNIX: 21 Q. But would the process be 22 similar in terms of the types of documents 23 you sent them -- 24 A. Yes. 25 Q. -- both to join and then after</p>
<p style="text-align: center;">743</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 "Statement on the required use of the Animal 3 Care Certified Website address"? 4 A. Yes. 5 Q. And you asked them to complete 6 monthly reporting forms and return them on a 7 timely basis to Howard Magwire? 8 A. Yes. 9 Q. And he was a UEP consultant at 10 that time or an employee? 11 A. Yes. And I don't know -- there 12 was a period of time that, yes, he did work 13 for us as a consultant and then we hired him 14 as our director of government relations 15 program, but I don't know what the timing of 16 it is. 17 Q. And are Exhibits 87 and 88 18 typical of how you would handle the license 19 agreement with other members as well, or 20 licensors I should say? 21 MS. LEVINE: Objection to the 22 form of the question. 23 THE WITNESS: Nu-Cal is a little 24 bit different than typical. And the 25 reason being is that Nu-Cal is a</p>	<p style="text-align: center;">745</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 they joined? 3 A. Yes. Yes. 4 Q. You can put those documents 5 aside. 6 Mr. Gregory, did there come a 7 time when there was some controversy about 8 producers being part of the license program? 9 A. Yes, there was. 10 Q. And did it result in producers 11 no longer being capable of obtaining a 12 license? 13 A. Yes, it did. 14 Q. For at least a period of time? 15 A. No. It changed to a point that 16 from that point forward, if you were an egg 17 producer, you had to -- on your production, 18 you had to implement the UEP certified 19 program, and that by doing so, you could 20 market eggs as UEP certified. If you were a 21 producer, that was the only way you could 22 market UEP certified. So there was the need 23 because that left people out of the market, 24 people that did not own chickens but were in 25 the marketing of eggs, they needed a means by</p>

26 (Pages 742 to 745)

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<p style="text-align: center;">746</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 which they could buy UEP certified eggs to 3 fill their customer's order. So it changed 4 at a point in time and it's remained that way 5 ever since.</p> <p>6 Q. I'm going to show you what 7 we'll mark as Exhibit 89 to your deposition. 8 - - - 9 (Exhibit Gregory-89, Packet of 10 documents, Bates MOARK0020062 - 11 MOARK0020096, was marked for 12 identification.) 13 - - - 14 BY MS. CAIN-MANNIX: 15 Q. We're really only focusing, 16 it's a large packet, but on a couple of 17 pages. It's Bates labeled MOARK0020062 18 through MOARK0020096. 19 I'm going to focus on pages 20 20078 to 20080. Do you have that? 21 A. Do you want me to scan these 22 now? 23 Q. Sure. 24 A. (Reviewing document.) 25 Okay. I just quickly dotted.</p>	<p style="text-align: center;">748</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 These are -- just to be clear, these 3 motions are taken from other 4 documents. They're not -- just to be 5 clear about the document you're using. 6 BY MS. CAIN-MANNIX: 7 Q. And the motion carried, this 8 motion number 2, with a vote of 19 yes and 8 9 nos. Correct? 10 MS. LEVINE: Object to the form 11 of the question. Lacks foundation as 12 to this document so the witness is 13 clear about what he's testifying to. 14 THE WITNESS: That's what 15 this -- that's what this so states. 16 BY MS. CAIN-MANNIX: 17 Q. And this motion essentially 18 says we're discontinuing the licensing 19 program for producers at this time. Is that 20 correct? 21 MS. LEVINE: Object to the form 22 of the question as to the motion 23 regarding this date and this document. 24 You certainly can answer the question. 25 THE WITNESS: Yes, at this point</p>
<p style="text-align: center;">747</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Can you identify this document? 3 A. I do. 4 Q. Was this a meeting that you 5 attended? 6 A. It appears that I did. It 7 doesn't have my name on it, but it appears 8 that I did. 9 Q. Were you the author of these 10 notes or minutes, if you will? 11 A. I would have to assume that I 12 am. I can't verify for sure. 13 Q. On the first page, do you 14 recall motion, the motions identified as 15 number 2 and number 3? 16 A. Yes, I do. 17 Q. And motion number 2 pertains to 18 producers. Is that correct? 19 MS. ZIEMIANEK: Counsel, which 20 page are we on? 21 MS. CAIN-MANNIX: 20078. 22 THE WITNESS: Yes. That is 23 addressed towards producers. 24 MS. LEVINE: Object to the form 25 of the question. Lack of foundation.</p>	<p style="text-align: center;">749</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 it is that if you are an egg producer, 3 your opportunity to market UEP 4 certified eggs is to -- for your 5 company to implement the program. 6 BY MS. CAIN-MANNIX: 7 Q. So when you say "implement the 8 program," you mean become a member, not a 9 member -- strike that. 10 You become a certified producer 11 under the UEP certified program? 12 A. Yes. 13 Q. You could no longer obtain a 14 license? 15 A. If you were an egg producer, 16 you could no longer obtain a license. Do 17 you -- we gave you the opportunity to enroll 18 in a program and sell eggs that way just like 19 all other producers were. So it was trying 20 to create an equal level playing field for 21 everybody. 22 Q. At that time, who had licenses, 23 do you recall, that were producers? 24 A. You know, I'm sorry, but this 25 is 2005. I don't recall.</p>

<p style="text-align: right;">750</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Do you recall if Sparboe was a 3 licensee at that time? 4 A. I do not. 5 Q. Motion number 3 is a motion 6 directed to shell egg processors and further 7 egg processors who do not own or operate egg 8 production facilities. Correct? 9 MS. LEVINE: Object to the form 10 of the question regarding this 11 document. 12 THE WITNESS: That is what it so 13 states. 14 BY MS. CAIN-MANNIX: 15 Q. And the motion passed. Correct? 16 A. Yes. 17 Q. And the purpose of the motion 18 is to allow shell egg processors and further 19 egg processors to continue to obtain licenses 20 to market ACC eggs? 21 MS. LEVINE: Object to the form 22 of the question. 23 BY MS. CAIN-MANNIX: 24 Q. So long as they don't own or 25 operate egg production facilities?</p>	<p style="text-align: right;">752</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. But not all -- 3 A. -- if you're a producer. 4 Q. Producers could no longer get 5 licenses, though? 6 A. You can no longer get a 7 license. 8 Q. Reason number 2 states it's a 9 "Reaction to an eastern producer who is 10 'cheating.'" Do you know who that was? 11 A. It was reported to me that 12 there, too, was a northeastern producer or 13 eastern producer that had violated the 14 program. And I've used the word here 15 "cheating," and that he had misrepresented 16 the product. 17 Q. Do you recall who that was? 18 A. Do I have to do -- do I have to 19 name? Kreider Farms. 20 Q. Reason number 3 states that one 21 of the reasons for the motion is a "Reaction 22 to the market place where in a non-certified 23 marketer can offer a discount on shell eggs 24 which are not ACC vs. ACC. This is a 25 competitive advantage since they may have</p>
<p style="text-align: right;">751</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. And the reason why that 3 was is that we did not want to restrict this 4 program to only egg producers. There is 5 other people that market eggs. So we wanted 6 to provide an opportunity for those people 7 that did not own egg production to be able to 8 fill their customers' needs by providing a 9 license agreement that had certain 10 stipulations to it. 11 Q. Let's look at the reasons for 12 the motions. 13 A. Yes. 14 Q. Do you recall one of the 15 reasons for the motion was an effort to gain 16 100 percent participation? 17 A. Yes. That's always been our 18 goal. We'd like for everybody to be on the 19 program. 20 Q. But in some sense, motion 21 number 2 eliminates one opportunity for 22 participation? 23 A. No. In fact, motion number 2 24 creates an equal situation where everybody 25 can participate in the program --</p>	<p style="text-align: right;">753</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 lower costs on their own production." 3 A. What is trying to be said 4 there, if you are an egg producer and you 5 have ten houses of chickens, and if you have 6 only implemented our guidelines on two of 7 those houses, let's say, when you take the 8 total farm cost of production because it does 9 cost more to produce Animal Care Certified 10 eggs at this point, it does cost more to 11 produce Animal Care Certified eggs, so when 12 you are only licensed to market eggs out of 13 let's say a couple houses and you spread that 14 cost over your entire farm or company, then 15 you have a lower cost than the company that 16 has made a commitment to do it on 100 percent 17 all their farms. 18 Q. Does it also mean that a 19 licensed producer could offer to a customer 20 UEP certified eggs or a lower cost non-UEP 21 certified egg? 22 A. That has always been the case, 23 that if you are a UEP certified producer, you 24 have the opportunity to buy non-certified 25 eggs if that's what your customer would</p>

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<p style="text-align: right;">754</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 prefer to buy and pay for. So that's always 3 been the opportunity to do that. If your 4 customer wants that, you want to do so. 5 Q. At that time, were some members 6 upset by producers who were licensors but not 7 subject to the full UEP certified program, 8 that they could produce eggs on some houses 9 that weren't subject to UEP guidelines at a 10 lower cost of production and sell them to 11 customers at a lower cost, or they had the 12 option of selling some licensed eggs at a 13 higher cost to customers and it created a 14 competitive disadvantage?</p> <p>15 MS. LEVINE: Objection to the 16 form of the question. Compound.</p> <p>17 THE WITNESS: I'm not trying to 18 be evasive, I'm just --</p> <p>19 BY MS. CAIN-MANNIX:</p> <p>20 Q. It's a long question.</p> <p>21 A. It's been -- I don't know 22 how -- at this point I'm not clear on the 23 question and how to answer it.</p> <p>24 Q. UEP certified producers that 25 were part of the certified program --</p>	<p style="text-align: right;">756</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Certified eggs. 3 Q. But it says that was unanswered 4 by the motion. 5 A. The motion doesn't necessarily 6 say that, but that was -- there's no motion 7 that clearly says limit free trade, but 8 that's the point of this, is establishing a 9 license agreement for people that are simply 10 in the process and our egg products business 11 that don't own layers is that if we were to 12 continue to leave them out of the 13 opportunity, that would limit free trade. 14 Q. But they already had that 15 opportunity prior to the motion. Right? 16 A. No, they did not. We're 17 talking about at this point in time egg 18 producers had a license, there was -- this is 19 when we are now approving a license agreement 20 for people that don't own chickens. 21 Q. I want to go back to the first 22 exhibit I showed you. 23 MS. LEVINE: What number is 24 that? 25 MS. CAIN-MANNIX: I think it is</p>
<p style="text-align: right;">755</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. -- had to implement guidelines 4 on 100 percent of their houses? 5 A. At that point in time that was 6 changed, yes. 7 Q. And the licensors didn't have 8 to do that? 9 A. That's what was occurring, yes. 10 Q. And so it was a competitive 11 disadvantage due to lower cost of production? 12 MS. LEVINE: Objection to the 13 form of the question. 14 THE WITNESS: Yes. 15 BY MS. CAIN-MANNIX: 16 Q. Moving down to "Problems 17 created/unanswered by motions." Number 1, it 18 says it "Limits free trade of eggs." Do you 19 recall that discussion? 20 A. No, I do not recall the 21 discussion, but I think that it's what we 22 were -- what this is referring to is that we 23 needed to find a vehicle licensed somehow or 24 another so that we did not leave anybody out 25 of the opportunity to sell Animal Care</p>	<p style="text-align: right;">757</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 86. 3 BY MS. CAIN-MANNIX: 4 Q. It states that there was an 5 approval -- "UEP Board has approved the 6 marketing of Animal Care Certified eggs by 7 non-certified producers and/or marketers 8 provided they sign a License and Marketing 9 Agreement..." 10 A. So what's your point I'm asking? 11 Q. So it was open to marketers 12 back then that were producers? 13 A. That was as of January 2004, 14 and now we're looking at a meeting of May of 15 2005, so... 16 Q. Right. So marketers didn't 17 change. Right? 18 A. Let me go back and look at 19 that. 20 I'm not trying to be evasive, 21 I'm struggling with the time because so many 22 things happened and as changes were going on 23 and I -- my point here is that we were trying 24 to make sure that everybody that marketed 25 eggs had an opportunity to do that, and --</p>

<p style="text-align: right;">758</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 what page were we on? I forget, was it 78? 3 And what I think I'm trying to say at that 4 point in time, that had we not done that, 5 that it would have left some people out of 6 the market.</p> <p>7 Q. But licensors back in '4 -- I'm 8 sorry, strike that.</p> <p>9 Marketers could do it in 2004 10 and they could still do it in 2005. What 11 changed in 2005 was producers could not get 12 licenses anymore.</p> <p>13 A. No. See, I'm not sure, you 14 see -- you know, my memory is foggy on this, 15 but I'm not sure what we're talking about in 16 a meeting April 19, 2005, all I'm -- what I 17 think I'm reporting on is what those motions 18 were at some point preceding that. This was 19 not necessarily a meeting at that point in 20 time of the Animal Welfare Committee or the 21 board is reporting what those motions were at 22 a previous time.</p> <p>23 Q. And what time was that, to your 24 recollection?</p> <p>25 A. Come on. Come on. My memory</p>	<p style="text-align: right;">760</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 reporting that our actions had raised 3 these questions. I'm not saying that 4 I'm raising this question.</p> <p>5 BY MS. CAIN-MANNIX:</p> <p>6 Q. Fair enough. The final page 7 references another motion. Do you recall 8 when this motion was made?</p> <p>9 A. I do not.</p> <p>10 Q. Was it made at this particular 11 meeting?</p> <p>12 A. I do not know.</p> <p>13 Q. And this final motion was 14 defeated. Correct?</p> <p>15 A. Yes. That so states.</p> <p>16 Q. And this final motion would 17 have included non-certified producers and 18 marketers. Correct?</p> <p>19 A. Quite honestly, I don't 20 understand this because I don't know when 21 this motion had been made. But I do -- what 22 I'm saying to you is that at some point in 23 time, licenses were given to people that were 24 not egg producers to allow them to market 25 certified eggs. So I don't know when that</p>
<p style="text-align: right;">759</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 is not that good. You know, I don't know 3 what the date of that was.</p> <p>4 Q. Was it a year old motion?</p> <p>5 A. I do not know that.</p> <p>6 Q. Moving on to page 79, the 7 continued list of problems created/unanswered 8 by motion. Number 4, one of the reasons was 9 it "Raises the question about the original 10 purpose of ACC: a husbandry practice program 11 now managing the marketing and economic 12 restriction of movement of product." You 13 wrote that. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. There's a final --</p> <p>16 A. You're implying that that is --</p> <p>17 Q. I'm not implying anything. I'm 18 just trying to get the facts that you wrote 19 this at the time of this document.</p> <p>20 MS. LEVINE: Objection to form 21 of the question. I think he said he 22 doesn't recall who wrote it, he thinks 23 he does.</p> <p>24 THE WITNESS: But what I'm 25 writing here is that this is -- I'm</p>	<p style="text-align: right;">761</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 motion is made and I don't know why it was 3 defeated.</p> <p>4 Q. Turn to page 76 of this packet.</p> <p>5 MR. BARNES: Which package are 6 we on, Counsel?</p> <p>7 MS. CAIN-MANNIX: Same one, 8 four pages previous to this.</p> <p>9 THE WITNESS: So now this is 10 minutes from an April 19, 2005, 11 meeting of the Producer Committee for 12 Animal Welfare. You're asking me 13 about page 76?</p> <p>14 BY MS. CAIN-MANNIX:</p> <p>15 Q. Correct, the motion identified 16 in the middle of that page.</p> <p>17 A. Yes.</p> <p>18 Q. Would that motion have included 19 any type of marketer, whether that marketer 20 be a producer marketer or just a processor 21 marketer that doesn't produce?</p> <p>22 MS. LEVINE: Object to the form 23 of the question. Lacks foundation.</p> <p>24 Unclear as to the identity of the 25 entity counsel is referring to.</p>

30 (Pages 758 to 761)

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<p style="text-align: center;">762</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 THE WITNESS: I think this 3 motion is talking about those people 4 that don't own egg laying hens and 5 we're talking about expanding this to 6 people that are egg marketers but 7 don't qualify -- that don't own egg 8 laying hens. I think that's what 9 we're talking about here. You know, 10 I --</p> <p>11 BY MS. CAIN-MANNIX: 12 Q. Why is that different from 13 motion number 3 that we looked at previously 14 on page 78? 15 A. It is different. 16 Q. I'm asking if it was different 17 because one carried and one did not? 18 A. So I'm going to compare that to 19 which one you said? 20 Q. On page 78, motion number 3. 21 A. It did carry. And I don't 22 know -- but, again, is that part of this 23 April 5th -- was that a motion from 24 April 5th? I don't see it. I don't know. 25 Q. Well, regardless of the date,</p>	<p style="text-align: center;">764</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Correct. 3 A. I don't know. You'd have to 4 show me something to confirm that. I don't 5 know. 6 Q. Can you pull out -- 7 A. You know, let me tell you 8 something. Starting from 1999 through today, 9 this program has been talked about in 10 virtually every meeting UEP has ever held. 11 There has been numerous changes through -- 12 Q. I'm sorry to interrupt you, but 13 we have limited time and I didn't have a 14 question pending, so let your counsel ask 15 that and let's move on. 16 A. You're trying to pinpoint me on 17 memories of dates and I can't do that. 18 Q. I'm not. I'm asking if you 19 knew it. If you don't, we'll move on. So 20 let's look at Exhibits 70 and 71 that were 21 previously introduced. 22 A. That's way back here. 23 MS. LEVINE: Bottom of the pile. 24 BY MS. CAIN-MANNIX: 25 Q. Do you need help finding it?</p>
<p style="text-align: center;">763</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 motion number 3 is clear that it pertains to 3 shell egg processors and further egg 4 processors -- 5 MS. LEVINE: Object to the form 6 of the question. Restate my objection. 7 BY MS. CAIN-MANNIX: 8 Q. -- who do not own or operate 9 egg producing facilities? 10 A. Yes. Yes. 11 Q. Let's move on. You can put 12 that aside for now. 13 Did there come a time, 14 Mr. Gregory, when members wanted to get the 15 UEP license program back to the extent they 16 wanted producers to be able to join in the 17 licensing program again? 18 MS. LEVINE: Objection. 19 THE WITNESS: So if you were a 20 producer and you did not want to be a 21 UEP certified company, was there a 22 time when the producers were asking 23 and they would like to have the 24 license again, that's the question? 25 BY MS. CAIN-MANNIX:</p>	<p style="text-align: center;">765</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. 70 and 71. Okay. 3 Q. Is this the meeting you 4 attended? 5 A. It is. 6 MS. LEVINE: Which document are 7 you speaking of? 8 MS. CAIN-MANNIX: I'm sorry, 9 Exhibit 70. 10 BY MS. CAIN-MANNIX: 11 Q. And at that meeting, did those 12 present, which I understand from your prior 13 testimony included UEP members and UEA 14 further processors -- 15 A. Yes. 16 Q. -- raise a concern or an issue 17 regarding the discontinuance of the ACC 18 non-certified marketing agreement? 19 A. I'm sorry, where are you 20 reading that at? 21 Q. It's issue number 4. 22 A. Yes. What is your point? 23 Q. Is that a reference to the 24 previous licensing program? 25 A. No, that's a -- well, I don't</p>

31 (Pages 762 to 765)

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<p style="text-align: center;">766</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 know. It is the point of these people are 3 raising issues or concerns about the program. 4 I've identified that's one of them.</p> <p>5 Q. You can put that aside. 6 We'll look at 71, pages 64 and 7 65, "HISTORICAL VIEW OF 'UEP CERTIFIED' 8 PROGRAM." This is something that you 9 authored. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. At the bottom of this page you 12 stated, "With the creation of the 'Animal 13 Care Certified' program in 2002, UEP assumed 14 management of the program and established 15 additional requirements including auditing by 16 USDA and ARPAS. The program remained a 17 voluntary program for all UEP members and was 18 made available to non-UEP members." Correct?</p> <p>19 A. Correct.</p> <p>20 Q. That's a correct statement?</p> <p>21 A. Correct.</p> <p>22 Q. Would non-UEP members that were 23 part of the certified program, could they 24 attend meetings?</p> <p>25 MS. LEVINE: Object to the form</p>	<p style="text-align: center;">768</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 attend the meeting?</p> <p>3 MS. LEVINE: Did you answer the 4 question?</p> <p>5 BY MS. CAIN-MANNIX:</p> <p>6 Q. They were not prohibited -- 7 A. Pardon?</p> <p>8 Q. I was confused by your answer. 9 Were they permitted or not permitted?</p> <p>10 MS. LEVINE: Object to the form 11 of the question. If this witness can 12 give a general answer to each and 13 every committee or board meeting in a 14 ten-year period.</p> <p>15 THE WITNESS: They were not 16 invited. If you are not an egg 17 producer, not a -- I mean, if you're 18 not a UEP member, you are not invited 19 to any UEP meetings.</p> <p>20 BY MS. CAIN-MANNIX:</p> <p>21 Q. Were you prohibited from 22 attending UEP meetings if you were not a 23 member, but you were a certified -- 24 A. Unless they were invited to 25 that meeting for some reason and they showed</p>
<p style="text-align: center;">767</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 of the question. Which meetings are 3 you asking about?</p> <p>4 MS. CAIN-MANNIX: Board or 5 committee meetings of UEP.</p> <p>6 MS. LEVINE: Object to the form 7 of the question. It depends. Can you 8 identify which board meeting you're 9 asking this witness over a ten-year 10 period?</p> <p>11 MS. CAIN-MANNIX: I'm asking 12 just in general, were they permitted.</p> <p>13 MS. LEVINE: Object to the form 14 of the question. If this witness can 15 give a general answer as to the 16 meetings, you can. If you can't...</p> <p>17 THE WITNESS: It was not to my 18 knowledge nor was it -- it was not 19 intended that any, and I don't recall 20 any of them, that if you were not a 21 UEP member, you were not welcome at a 22 UEP meeting.</p> <p>23 BY MS. CAIN-MANNIX:</p> <p>24 Q. So you're saying that they were 25 not, in general, they were not permitted to</p>	<p style="text-align: center;">769</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 up and were not a member, they were asked to 3 leave.</p> <p>4 Q. Did any nonmembers that were 5 UEP certified participate in any UEP votes?</p> <p>6 A. No.</p> <p>7 Q. Moving on. Oh, wait. The next 8 paragraph talks about fees.</p> <p>9 A. Yes.</p> <p>10 Q. So members and nonmembers were 11 subject to a fee for participation in the UEP 12 certified program. Correct?</p> <p>13 A. If you were using the program, 14 yes, you had to pay a fee.</p> <p>15 Q. Moving down on your historical 16 view document, two paragraphs below, the 17 reference is the approval of the license and 18 marketing agreement, and that it was 19 terminated in January 2005. Is that correct?</p> <p>20 MS. LEVINE: Objection to the 21 extent this witness can remember.</p> <p>22 THE WITNESS: That is so stated 23 that way, but I think there is -- you 24 know, I think as time goes on, there 25 is some confusing things happening</p>

32 (Pages 766 to 769)

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<p style="text-align: right;">770</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 here. 3 BY MS. CAIN-MANNIX: 4 Q. We'll try to clear that up. 5 You agree with the December 2003 statement 6 that it was approved at that time because we 7 went over that. Correct? 8 MS. LEVINE: Object to the form 9 of the question. 10 THE WITNESS: Again, if that's 11 what I so stated before. 12 BY MS. CAIN-MANNIX: 13 Q. Are you objecting to the second 14 part of that paragraph -- 15 A. I'm having -- 16 Q. -- about the termination -- 17 A. Yes. 18 Q. -- in January 2005? 19 A. That's the part I'm struggling 20 with. 21 Q. Was it partially terminated in 22 terms of the licensing portion for producers? 23 A. That could be what it is. I 24 don't know. 25 Q. You can put that aside.</p>	<p style="text-align: right;">772</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. It identifies a UEP Animal 3 Welfare Committee meeting on May 15 of 2006 4 in Washington, D.C.? 5 A. Yes. 6 Q. Did you attend this meeting? 7 A. Yes. 8 Q. Did you create these minutes? 9 A. Yes. 10 Q. Turning to page 56. 11 MS. LEVINE: Just for the 12 record, you're reading from the Bates 13 stamp. It's Bates stamp 56. 14 BY MS. CAIN-MANNIX: 15 Q. Right. When I say 56, I'm 16 referring to the last two numbers of the 17 Bates stamp. 18 The section "Non-Certified 19 License Agreement," if I could just read it. 20 "Gregory presented the new License Agreement, 21 which prompted the following motion: 22 "Motion: It was moved by 23 Fortin and seconded by Hickman to approve the 24 'License Agreement' for companies that do not 25 own layers in company owned, contract farms,</p>
<p style="text-align: right;">771</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I'm going to show you what 3 we'll mark as Exhibit 90. 4 - - - 5 (Exhibit Gregory-90, Animal 6 Welfare Committee October 10, 2006 San 7 Antonio, TX, Bates MOARK0027352 - 8 MOARK0027389, was marked for 9 identification.) 10 - - - 11 BY MR. OLSON: 12 Q. We're going to be focusing on 13 page 56 of this document. 14 MS. ANDERSON: Bates? 15 MS. CAIN-MANNIX: Oh, sure. 16 It's MOARK0027352 through MOARK0027386 17 (sic). 18 BY MS. CAIN-MANNIX: 19 Q. Do you recognize this document? 20 A. I accept it based on what it 21 states it is. 22 Q. Focusing your attention on the 23 minutes of the meeting beginning at page 55 24 of this packet. 25 A. Yes.</p>	<p style="text-align: right;">773</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 or affiliate facilities and for egg 3 production companies having made a commitment 4 to meet the 100% rule while implementing the 5 cage space requirements of UEP's established 6 hatch schedule currently in effect. Motion 7 carried unanimously." 8 Does this -- do you recall this 9 particular motion? 10 A. I recall -- I accept it for 11 what it says there. 12 Q. And it was a modification -- 13 A. I would assume so, yes. 14 Q. -- to the program? 15 A. Yes. 16 Q. It now allowed producers to 17 have a non-certified license agreement. Is 18 that correct? 19 A. I don't think it reads that 20 way, no. 21 MR. MCKENNEY: Object to the 22 extent it mischaracterizes the 23 document. 24 BY MS. CAIN-MANNIX: 25 Q. The second half of the motion</p>

33 (Pages 770 to 773)

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<p style="text-align: right;">774</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 applies to "...egg production companies 3 having made a commitment to meet the 100% 4 rule while implementing the cage space 5 requirements of UEP's established hatch 6 schedule currently in effect." Wouldn't that 7 be producers?</p> <p>8 A. That would be those producers 9 that are -- have committed to be on the UEP 10 certified program.</p> <p>11 Q. But they're just obtaining a 12 license, not -- they're not on the UEP 13 certified program.</p> <p>14 A. No, they are on the UEP 15 certified program.</p> <p>16 Q. The heading states 17 "Non-Certified License Agreement."</p> <p>18 A. Right. I see you're trying 19 to -- you're tamping my memory and I'm trying 20 to remember a sequence of events. I'm trying 21 to remember what is going on here. There was 22 a situation where there was -- hang on a 23 second. There was a company being bought out 24 by a UEP certified company, and our rule says 25 that in order to be a UEP certified company,</p>	<p style="text-align: right;">776</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 and they did not want to be marketing 3 anything that was not UEP certified eggs. 4 So they came to us and I worked 5 with them, and another company if you want to 6 know later on, to try to figure out a way not 7 to disrupt the market. And we figured out, I 8 come up with an idea that I presented that 9 said, okay, you're not going to lose your 10 licensing on your own eggs or your ability to 11 market eggs, own eggs. What we're going to 12 do is bridge this thing, we will give you a 13 license agreement in this case which --</p> <p>14 Q. Golden Oval, just so we're on 15 the same page.</p> <p>16 A. We will give Moark Productions 17 a license agreement as such that says that 18 they can continue to market those Golden Oval 19 eggs but not as UEP certified until they 20 become 100 percent on their farms. So we 21 worked with Golden Oval and we laid out a 22 schedule by which they would repopulate 23 houses over the period of the next few years. 24 Those eggs could not be marketed as UEP 25 certified until it was 100 percent, but</p>
<p style="text-align: right;">775</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 recognized as UEP certified company, you have 3 to do this on 100 percent of all your farms. 4 Okay. So now this company is buying another 5 rather large egg company, and that egg 6 company is not a UEP certified company, but 7 the company that is buying this company is a 8 rather large company with a prominent brand 9 in the market all over the country. And 10 their attitude was that we do not want to 11 market any eggs that are not UEP certified. 12 We don't want to take any risk. Is there a 13 way to work with this and can your rules be 14 modified to allow us somehow or another to 15 come in the program without completely losing 16 our certification on all the birds we've been 17 committed to all this time. The company was 18 Golden Oval and it was being sold to Moark 19 Productions, the name changes, to Moark 20 Productions, and Moark Productions had a -- 21 at that -- again, I apologize because I don't 22 know the dates of all this stuff, Moark 23 Productions had sold 50 percent of their 24 company to Land O'Lakes and Land O'Lakes' 25 label is in the market all over the country,</p>	<p style="text-align: right;">777</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 rather than jeopardize their UEP certified, 3 we were bridging the gap by giving a license 4 agreement to allow this to happen. Otherwise 5 it would have forced a company, a large 6 company, out of the ability to market UEP 7 certified eggs or it might have interfered 8 with the acquisition of that company. So we 9 tried to figure out a way to bridge this. 10 And the board is accepting that. And we 11 also, I don't mean to -- but we also then 12 used this same opportunity of then to allow 13 Michael Foods to come into it, to a point it 14 allowed Michael Foods then to buy Animal Care 15 Certified or UEP certified eggs from 16 certified companies to provide -- to fill 17 their market orders from customers that 18 wanted those eggs. In the meantime, they had 19 to make a commitment that all of their 13 20 million hens would on a repopulate schedule 21 meet this program. And in the meantime, they 22 could not market any of their own eggs as UEP 23 certified until it was complete. So there's 24 a license agreement in place to allow for 25 this exception because of what's going on in</p>

34 (Pages 774 to 777)

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<p style="text-align: center;">778</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 the market, and we were trying not to have a 3 market disruption.</p> <p>4 Q. So if I understood your 5 testimony, there were essentially two 6 exceptions, and this motion was to address 7 those. One was --</p> <p>8 A. That was the case.</p> <p>9 Q. Wait. Let me finish. Moark 10 and Golden Oval eggs, number one; exception 11 number two, Michael Foods?</p> <p>12 A. Yes, but we put it in as a 13 policy. We didn't say this was only for 14 these people. This would be something that 15 would be available thereafter if -- for any 16 company needing to use it.</p> <p>17 Q. Did any other company need to 18 use it later?</p> <p>19 MS. LEVINE: Sorry?</p> <p>20 BY MS. CAIN-MANNIX:</p> <p>21 Q. You know, we identified two 22 exceptions. Did others take advantage of the 23 policy after these two?</p> <p>24 A. You know, I don't recall. And 25 I recall these two because it was a point in</p>	<p style="text-align: center;">780</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I'm sorry? 3 Q. Does looking at the date of the 4 minutes help, May 15, 2006?</p> <p>5 A. Yes, it does, but what I'm 6 trying to explain to you, that there's a 7 whole series of meetings taking place and 8 this program has changed over the years to a 9 point. And I don't know about this 10 particular issue, the license agreement, you 11 know, the evolution of what all that was. 12 I'm not trying to evade your question. I'm 13 just trying to be careful and not tell you 14 something.</p> <p>15 Q. Thank you. I'm going to move 16 on. You can put that aside. I'm going to 17 show you what we'll mark as Exhibit 91.</p> <p>18 - - -</p> <p>19 (Exhibit Gregory-91, 1/20/09 20 United Voices, Bates RWS 000000775 - 21 RWS 000000781, was marked for 22 identification.)</p> <p>23 - - -</p> <p>24 BY MS. CAIN-MANNIX: 25 Q. I want to focus your attention</p>
<p style="text-align: center;">779</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 time when there was great debate going on 3 about this and how we were going to handle 4 this. Thereafter, I don't recall if anybody 5 took advantage of it or not.</p> <p>6 My point of this is you're 7 trying to pin me down on dates and on 8 motions. What I'm trying to explain to 9 you --</p> <p>10 Q. No, I'm not. I'm trying to ask 11 if you remember. And if you don't, it's 12 okay.</p> <p>13 A. There's a series of events 14 that's taking place here.</p> <p>15 Q. I understand. It's okay if you 16 don't remember. I'm just asking if you do 17 know.</p> <p>18 MS. LEVINE: I think what he's 19 objecting to is you trying to pin him 20 to a date. He does remember the 21 sequence, he doesn't remember the 22 date.</p> <p>23 BY MS. CAIN-MANNIX:</p> <p>24 Q. Does looking at the date of the 25 minutes help?</p>	<p style="text-align: center;">781</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 on the first page, the second from the bottom 3 paragraph.</p> <p>4 MS. ZIEMIANEK: Could you state 5 the Bates number for that?</p> <p>6 MS. CAIN-MANNIX: RWS 775. It's 7 got about five zeros in front of that.</p> <p>8 BY MS. CAIN-MANNIX:</p> <p>9 Q. It states in the middle of the 10 paragraph, the second from the bottom, "UEP 11 meetings have always been open to everyone 12 and therefore we apologize that circumstances 13 now warrant some meetings or portions of some 14 meetings to be closed to selected members. 15 We hope allied members and others will be 16 understanding."</p> <p>17 Does this refresh your 18 recollection about the meeting policy?</p> <p>19 A. Yes.</p> <p>20 MS. LEVINE: Object to the form 21 of the question.</p> <p>22 BY MS. CAIN-MANNIX:</p> <p>23 Q. Essentially at that time, that 24 was the first time that you were saying 25 nonmembers or selected members of other</p>

35 (Pages 778 to 781)

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<p style="text-align: center;">782</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 allied divisions could no longer attend 3 meetings?</p> <p>4 MS. LEVINE: Object to the form 5 of the question.</p> <p>6 THE WITNESS: There has always 7 been UEP meetings that are closed, 8 Executive Committee meetings were 9 always closed. Committee or boards at 10 times have gone into executive 11 sessions. But other than those, our 12 meetings were rather open as an 13 education of what's going on in the 14 industry about all kinds of things. 15 What we're doing here is making 16 acknowledgment at this point in time 17 because of the lawsuit filed against 18 us in October or whenever the date was 19 in 2000 -- September 2008, we now are 20 saying that we're going to -- what 21 we're trying to say to you, don't be 22 offended now because we are going to 23 tell you up front this is what's going 24 to happen.</p> <p>25 MS. CAIN-MANNIX: Thank you.</p>	<p style="text-align: center;">784</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Good morning. 3 Q. I will try to run through some 4 stuff very briefly and so we can get a move 5 on for today.</p> <p>6 First thing I want to ask you, 7 though, I want to take you back to the 8 beginning, I guess.</p> <p>9 A. The beginning of time or -- 10 Q. Pretty much. The beginning of 11 your time in the egg industry. You've been 12 involved in the egg industry for over 50 13 years?</p> <p>14 A. Yes.</p> <p>15 MS. LEVIN: Could you speak up? 16 It is impossible for me to hear.</p> <p>17 BY MR. SLIDERS:</p> <p>18 Q. I'm sorry, I have an accent. 19 If you can't understand me, just stop me.</p> <p>20 A. Where are you from?</p> <p>21 Q. I'm Australian.</p> <p>22 MS. LEVINE: I don't think it 23 was the accent, I think it was that it 24 wasn't loud enough.</p> <p>25 BY MR. SLIDERS:</p>
<p style="text-align: center;">783</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I'm going to pass to my colleague. 3 MR. SLIDERS: Go off the record 4 for a couple of minutes.</p> <p>5 VIDEOGRAPHER: The time is 6 approximately 10:43 a.m. We're off 7 the record.</p> <p>8 - - - 9 (A recess was taken.)</p> <p>10 - - - 11 VIDEOGRAPHER: The time is 12 approximately 10:51 a.m. This begins 13 tape three, volume three. We are back 14 on the record.</p> <p>15 - - - 16 EXAMINATION 17 - - -</p> <p>18 BY MR. SLIDERS: 19 Q. Good morning, Mr. Gregory. 20 VIDEOGRAPHER: Put on your 21 microphone.</p> <p>22 BY MR. SLIDERS: 23 Q. Good morning. My name is 24 Charles Slidders. I'm for the Indirect 25 Purchaser Plaintiffs.</p>	<p style="text-align: center;">785</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. So 50 years ago, you started 3 working in the egg industry? 4 A. I think the year was 1960, in 5 fact.</p> <p>6 Q. Who did you start working with 7 then? 8 A. The company was Cornbelt 9 Hatcheries.</p> <p>10 Q. And you rose up through the 11 ranks of Cornbelt Hatcheries to eventually 12 become the general manager? 13 A. Surprisingly, yes.</p> <p>14 Q. And as general manager, your 15 role was to oversee the whole facilities? 16 A. Yes.</p> <p>17 Q. All the sales and marketing of 18 the eggs? 19 A. Yes.</p> <p>20 Q. No problem. And then for the 21 last 30 years you've been involved in first 22 the Midwest Poultry Association and then UEP 23 as vice president and now the UEP as 24 president? 25 A. Yes, I served on the Board of</p>

36 (Pages 782 to 785)

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<p style="text-align: center;">786</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Directors as an egg producer during some of 3 those years, and I was really interested in 4 the organization, so in 1982, I changed 5 careers and go to work for Midwest United Egg 6 Producers at that time.</p> <p>7 Q. Now, as I understand it, what 8 we've seen over the last couple of days 9 you've written extensively on economic 10 issues?</p> <p>11 MS. LEVINE: Object to form of 12 the question. Mischaracterized what 13 the witness has testified time and 14 time again.</p> <p>15 THE WITNESS: It's been obvious 16 that I've written far too much.</p> <p>17 BY MR. SLIDDERS:</p> <p>18 Q. I understand that you're not an 19 economist?</p> <p>20 A. That's correct.</p> <p>21 Q. But you have a fair 22 understanding of economic issues as they 23 relate to the egg industry?</p> <p>24 MS. LEVINE: Object to the form 25 of the question. The witness has</p>	<p style="text-align: center;">788</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 by you to all. Who is the "all"?</p> <p>3 A. You know, I don't know. I 4 would --</p> <p>5 MS. LEVINE: Mr. Gregory, don't 6 guess. If you know the answer, you 7 can so state. If you don't --</p> <p>8 BY MR. SLIDDERS:</p> <p>9 Q. If you don't know, that's fine.</p> <p>10 A. I don't know who "all" was at 11 that point.</p> <p>12 Q. Now I'd like to exhibit another 13 document.</p> <p>14 - - -</p> <p>15 (Exhibit Gregory-93, Impacts of 16 Banning Modern Cage Egg Production in 17 the United States press release, Bates 18 CM00187932 - CM00187935, was marked 19 for identification.)</p> <p>20 - - -</p> <p>21 BY MR. SLIDDERS:</p> <p>22 Q. A document Exhibit 93, which I 23 believe is a press release with Bates number 24 CM00187932. Can you identify that document?</p> <p>25 A. Yes, I do.</p>
<p style="text-align: center;">787</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 testified to this.</p> <p>3 THE WITNESS: Based on having 4 been an egg producer, I went through 5 times of losing money, and it made me 6 pay more attention to some things 7 because of that.</p> <p>8 BY MR. SLIDDERS:</p> <p>9 Q. I understand. If I could give 10 you what I will mark Exhibit 92, which is an 11 e-mail chain, it's a one page e-mail chain 12 and it's Bates stamped CF0008607.</p> <p>13 - - -</p> <p>14 (Exhibit Gregory-92, E-mail 15 chain, Bates CF0008607, was marked for 16 identification.)</p> <p>17 - - -</p> <p>18 BY MR. SLIDDERS:</p> <p>19 Q. If you could just quickly look 20 through that e-mail.</p> <p>21 A. Yes, I've read it.</p> <p>22 Q. Can you identify that e-mail?</p> <p>23 A. Yes, I can.</p> <p>24 Q. And that is an e-mail written 25 by -- the second e-mail is an e-mail written</p>	<p style="text-align: center;">789</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is that a press release</p> <p>3 entitled, "IMPACTS OF BANNING MODERN CAGE EGG</p> <p>4 PRODUCTION IN THE UNITED STATES"?</p> <p>5 A. I don't know whether it's a</p> <p>6 press release because it doesn't state that</p> <p>7 it's a press release. It might have been,</p> <p>8 but I don't know that.</p> <p>9 Q. If we go back to the e-mail.</p> <p>10 A. Yes.</p> <p>11 Q. If we go to the last line, it</p> <p>12 says, "You will find attached press releases</p> <p>13 that are being released to the media today by</p> <p>14 Golin Harris."</p> <p>15 MS. LEVINE: Object to the form</p> <p>16 of the question. Lacks foundation</p> <p>17 that these two documents go together.</p> <p>18 BY MR. SLIDDERS:</p> <p>19 Q. Is this a press release that</p> <p>20 was attached to that e-mail?</p> <p>21 A. I don't know.</p> <p>22 Q. If I could now exhibit another</p> <p>23 document.</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-94, Impacts of</p>

<p style="text-align: center;">790</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Banning Cage Egg Production in the 3 United States report, Bates 4 CPCEGED00132106 - CPCEGED00132145, was 5 marked for identification.) 6 - - - 7 MS. LEVINE: He's on to the next 8 document. 9 THE WITNESS: I'm just trying to 10 refresh my memory about something 11 here. 12 MR. SLIDERS: What are we up 13 to? 14 MS. LEVINE: 94. 15 BY MR. SLIDERS: 16 Q. Now, Mr. Gregory, this is a 17 report titled, "Impacts of Banning Cage Egg 18 Production in the United States." 19 A. Yes. 20 Q. Can you identify this document? 21 A. Yes. 22 Q. If you go further down the page 23 it says, "A report prepared for United Egg 24 Producers." 25 Do you see that?</p>	<p style="text-align: center;">792</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 for identification.) 3 - - - 4 BY MR. SLIDERS: 5 Q. I'd like to tender Exhibit 95, 6 a document "UEP Board of Directors' Minutes," 7 Bates numbered UB00007529. 8 Can you identify this document? 9 A. Yes, I do. 10 Q. What is this document? 11 A. It's the minutes of a Board of 12 Directors' meeting in October 2009. 13 Q. Now, you'll see a number of 14 people's names besides "Board & Staff." 15 A. Yes. 16 Q. Were they presented with this 17 document, exhibit -- primary agreement, the 18 primary report? 19 MS. LEVINE: Object to the form 20 of the question. If the witness can 21 recall this meeting, he can answer. 22 THE WITNESS: You know, I have 23 my doubts that it was. I think it 24 would have been given to only UEP 25 members.</p>
<p style="text-align: center;">791</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. Now, if you go back to the 4 e-mail, and then if you go to the first 5 paragraph, it says, "UEP contracted with 6 Promar International to do an economic study 7 of the 'Impacts of Banning Cage Egg 8 Production in the United States'. This study 9 is now complete and a copy of the study will 10 be handed out next week during your Annual 11 Meeting in Hawaii." 12 A. Yes. 13 Q. Was this that study? 14 A. I'm sure it must be. 15 Q. Thank you. 16 A. There's a reason why this study 17 was done, but I don't know -- sure you have 18 time for me to answer you, but if you're 19 interested -- 20 Q. Potentially not. We can talk 21 later. 22 - - - 23 (Exhibit Gregory-95, UEP Board 24 of Directors' Meeting, Bates 25 UB00007529 - UB00007534, was marked</p>	<p style="text-align: center;">793</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MR. SLIDERS: 3 Q. So UEP members would have 4 received a copy of this report? 5 A. I think at some point in time, 6 either through this meeting or a mailing or 7 whatever it is, I think that we provided it 8 to all members. 9 Q. Did you provide it to anyone 10 else? 11 MS. LEVINE: Object to the form 12 of the question. To the extent 13 that -- 14 BY MR. SLIDERS: 15 Q. If you can recall. 16 MS. LEVINE: -- this witness can 17 recall facts like that back to 2009. 18 THE WITNESS: I don't recall. 19 BY MR. SLIDERS: 20 Q. That's fine. 21 If we could go to the press 22 release. 23 MS. LEVINE: Object to the form 24 of the question. Mischaracterizes the 25 document.</p>

38 (Pages 790 to 793)

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<p style="text-align: center;">794</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. SLIDERS: Sorry. 3 BY MR. SLIDERS: 4 Q. If we could go back to the 5 press release exhibit -- 6 MS. LEVINE: It's Gregory-93, I 7 think, is what is being referred to. 8 THE WITNESS: Yes. 9 BY MR. SLIDERS: 10 Q. That's entitled, do you see 11 under where it says, "IMPACTS OF BANNING 12 MODERN CAGE EGG PRODUCTION IN THE UNITED 13 STATES"? 14 A. Yes. 15 Q. Then under that part it says, 16 "Highlights from the report by Promar 17 International October 2009." 18 Do you see that? 19 A. Yes. 20 Q. And then if you go to the last 21 paragraph on the first page under -- before 22 "SUMMARY OF TOP FINDINGS," under "STUDY 23 PURPOSE AND METHODS," the third paragraph, it 24 says, "United Egg Producers contracted with 25 Promar International...for this report.</p>	<p style="text-align: center;">796</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes, I do, but -- oh, gosh. 3 Q. Was it Tom Earley? 4 A. Yes. Yes. Tom Earley. 5 Q. Now, if we can go to what I'll 6 call the ProMar report, and if we can turn to 7 page 5. 8 A. Okay. 9 Q. And if you see the second 10 paragraph there in the second sentence, "The 11 table egg industry is the dominant component 12 of the US egg industry, and accounts for 13 approximately 80 percent of the national egg 14 layer flock, and 85 percent of egg 15 production." 16 Do you see that? 17 A. Yeah, but I'm not sure that is 18 correct. Let me think. The table egg 19 industry -- 20 Q. Well, I have a question 21 that's -- 22 A. Okay. 23 Q. What is a table egg industry? 24 What are table eggs? 25 A. I think what he's measured here</p>
<p style="text-align: center;">795</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Promar International...is an independent, 3 nationally-respected agricultural economic 4 consulting firm based in Washington, D.C." 5 A. Yes. 6 Q. Do you see that? 7 A. Yes, I do. 8 Q. Did the UEP contract with 9 ProMar for the report, the ProMar report? 10 A. As I recall, this came about 11 through our public relations firm 12 GolinHarris, their recommendation, I don't 13 know whether they contracted with them or we 14 contracted with ProMar, but it was all 15 connected through them. 16 Q. This is a statement that 17 "ProMar is an independent nationally-respected 18 agricultural economic consulting firm based 19 in Washington," to your knowledge correct? 20 A. Yes, it is, although they 21 changed their name now. 22 Q. What is their name now? 23 A. Agralytica I believe it is. 24 Q. Do you know who prepared the 25 report?</p>	<p style="text-align: center;">797</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 and what USDA reports is that -- USDA reports 3 as such all layers as an example, and all 4 layers is egg laying hens, breeder flock 5 hens. You know, there's -- so forth. So it 6 doesn't include just those eggs for the 7 consumer market. And then we break that out 8 and USDA reports it out that what are table 9 egg layers. Those are just for the consumer 10 market. And that -- so what he's saying here 11 is that of the total USDA numbers, this is 12 the percentage of those total eggs that USDA 13 reports as being table egg layers -- table 14 egg layers. 15 Q. Now, if we can turn to page 10 16 of this report. The first sentence it says, 17 "Fresh shell table eggs are the principle 18 (sic) egg product consumed in the United 19 States." 20 Do you see that? 21 A. Yes. 22 Q. What are fresh shell table 23 eggs? 24 MS. LEVINE: Object to the form 25 as any kind of speculation by Tom</p>

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<p style="text-align: center;">798</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Earley who wrote this document. 3 Mr. Gregory can certainly answer a 4 question as to what his understanding 5 of fresh eggs.</p> <p>6 BY MR. SLIDERS:</p> <p>7 Q. What is your understanding of 8 fresh shell table eggs are?</p> <p>9 A. I think he's trying to break 10 this out that in the wordings shell eggs is a 11 keyword here. He's trying to say that there 12 are more shell eggs, like cartoned eggs or 13 that kind of thing, that are purchased than 14 there are egg products. So he's 15 differentiating between shell eggs and egg 16 products, I think is what is going on here.</p> <p>17 Q. So fresh shell table eggs, as 18 you understand it, is that a subset of table 19 eggs?</p> <p>20 MS. LEVINE: Object to the form 21 of the question.</p> <p>22 THE WITNESS: No, no, no. Table 23 eggs as USDA reports and what he's 24 doing here encompasses all the eggs 25 sold in carton as well as those that</p>	<p style="text-align: center;">800</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 second paragraph it says, "Overall prices at 3 the farm, wholesale, and retail levels tend 4 to move in close correlation with one 5 another."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. To your understanding, is that 9 a true statement?</p> <p>10 MS. LEVINE: Object to the form 11 of the question. If this witness can 12 testify to this economic report, you 13 may do so. If not...</p> <p>14 THE WITNESS: I don't know, I 15 think what he's trying to say is that 16 as farm price goes up or down, you 17 know, the price at the wholesale and 18 then the price at the retail levels, 19 there is a markup as such between -- I 20 think they're flown in correlation is 21 what he's trying to say here.</p> <p>22 BY MR. SLIDERS:</p> <p>23 Q. To your knowledge, is that 24 true?</p> <p>25 MS. LEVINE: Object to the form</p>
<p style="text-align: center;">799</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 are in egg products.</p> <p>3 BY MR. SLIDERS:</p> <p>4 Q. So as you understand it, is the 5 shell egg industry or the fresh shell eggs 6 the dominant portion of the table egg 7 industry?</p> <p>8 A. Yeah, I don't know what he 9 reports here, but generally the egg products 10 business uses about 30, 32 percent of the egg 11 production.</p> <p>12 Q. I understand. Now, if you go 13 to the last paragraph on page 10, the first 14 sentence says, "Shell eggs are the most 15 prevalent from of table egg consumption and 16 are a staple for retail household 17 consumption, bakeries, hotels, restaurants, 18 and catering food service operations."</p> <p>19 Now, what is your understanding 20 of what that means?</p> <p>21 A. I think what he is -- well, I 22 don't know. I don't want to speculate on it. 23 I don't want to misinterpret something.</p> <p>24 Q. If you turn to page 12 of the 25 ProMar report, in the third sentence of the</p>	<p style="text-align: center;">801</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 of the question. If Mr. Gregory has 3 economic facts to support that one way 4 or another, he can testify.</p> <p>5 THE WITNESS: You know, again, 6 I'm just trying to be as -- what we 7 have observed is in the last several 8 years, the margin that the retailer is 9 taking in the spread between what farm 10 price and retail price, that spread 11 has widened considerably, you know, 12 it's more than -- it's doubled in the 13 last few years.</p> <p>14 BY MR. SLIDERS:</p> <p>15 Q. What does that mean?</p> <p>16 A. I think what it means -- now, 17 I'm not a retailer and I can't speak for 18 them, but I think that it means that 19 retailers found out that they could leave 20 prices of eggs at a certain point, a high 21 point, whatever it is, and consumers would 22 buy as many of those eggs as they would 23 otherwise. And if farm prices as such go in 24 the tank, they didn't necessarily need to 25 lower their prices because farm prices went</p>

40 (Pages 798 to 801)

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<p style="text-align: center;">802</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 in the tank, even though they're buying them 3 much cheaper now and therefore they can make 4 a much better spread. For their business, 5 it's no reason to lower the price just 6 because farm prices went down.</p> <p>7 Q. How about if farm prices went 8 up?</p> <p>9 MR. MCKENNEY: Objection to form 10 of the question.</p> <p>11 MS. LEVINE: Object to the form 12 of the question. If this witness can 13 answer --</p> <p>14 BY MR. SLIDDERS:</p> <p>15 Q. In your observations.</p> <p>16 A. In my observation, they have 17 now established a spread that is good for 18 their business. And if the market goes up, 19 you know, they will -- their prices will go 20 up accordingly. But I also have to recognize 21 that it's in the marketplace, they're not 22 willing to change prices all the time. I'm 23 being sensitive to their business as well. 24 They don't need this real cycle business.</p> <p>25 Q. If we go back to page 12, or</p>	<p style="text-align: center;">804</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 of the question. If this witness is 3 able to answer from his own personal 4 knowledge, he can answer. Otherwise, 5 he should not speculate as he's 6 reading from a document from an 7 economist's report.</p> <p>8 THE WITNESS: Yeah, I think what 9 he's trying to say, based on the 10 history, you know, there was a time 11 when we all -- when -- what has 12 changed is because of improved 13 transportation that, yes, eggs flow 14 all across the country. You may 15 produce eggs in Iowa and deliver them 16 to California as an example. And so 17 he's talking about it such as a 18 national commodity now. And that's 19 one of the very reasons why we're 20 trying to pass federal legislation 21 now.</p> <p>22 BY MR. SLIDDERS:</p> <p>23 Q. You can put those aside now.</p> <p>24 A. Please understand, I'm trying 25 to evaluate what I think he's trying to say.</p>
<p style="text-align: center;">803</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 are we on page 12?</p> <p>3 A. Page 12, yes.</p> <p>4 Q. In the second sentence of the 5 second paragraph it says, "However, improved 6 transportation and handling technology as 7 well as nationwide price differentials in egg 8 producer prices have encouraged a nationwide 9 market and interstate trade for table eggs."</p> <p>10 A. I'm sorry, I lost you there.</p> <p>11 We're on page 12?</p> <p>12 Q. Page 12, second paragraph, 13 second sentence, beginning with, "However..."</p> <p>14 A. Okay. Yeah. I was looking 15 down the next paragraph. Okay.</p> <p>16 Q. It says, "...improved 17 transportation and handling technology as 18 well as nationwide price differentials in egg 19 producer prices have encouraged a nationwide 20 market and interstate trade for table eggs."</p> <p>21 To your knowledge as a person 22 with 50 years' experience in the egg 23 industry, is there a nationwide market for 24 eggs?</p> <p>25 MS. LEVINE: Object to the form</p>	<p style="text-align: center;">805</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I understand, Mr. Gregory.</p> <p>3 This is the next exhibit, 96. It is an 4 e-mail from you to all again dated Friday 5 June 8, 2012.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-96, E-mail 8 chain, Bates CF0005677, was marked for 9 identification.)</p> <p>10 - - -</p> <p>11 MS. ANDERSON: Counsel, the 12 Bates?</p> <p>13 MR. SLIDDERS: CF0005677.</p> <p>14 For expediency I will also 15 exhibit document 97 which is entitled, 16 "Economic Impacts of Converting US 17 Production to Enrich Cage Systems."</p> <p>18 - - -</p> <p>19 (Exhibit Gregory-97, Economic 20 Impacts of Converting US Production to 21 Enrich Cage Systems, Bates CF0005678 - 22 CF0005704, was marked for 23 identification.)</p> <p>24 - - -</p> <p>25 MS. ZIEMIANEK: Bates number on</p>

<p style="text-align: center;">806</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that? 3 MR. SLIDDERS: CF0005678. My 4 apologies. 5 THE WITNESS: The question is? 6 BY MR. SLIDDERS: 7 Q. I think you testified earlier 8 that ProMar had changed its name to 9 Agralytica? 10 A. Yes. 11 Q. Do you identify this e-mail in 12 front of you? 13 A. Yes. It was an e-mail I sent 14 to the Board of Directors. 15 Q. And it refers to, if you go to 16 the second paragraph, and the third 17 paragraph, it refers to "the attached 18 report." Is that the attached report, the 19 Agralytica report that is being marked as 20 Exhibit 98? 21 A. Yes, I'm sure it is. 22 Q. Now, if we go to the next 23 paragraph, the third paragraph, it says, 24 "After having contacted equipment companies, 25 egg producers and others, Tom completed his</p>	<p style="text-align: center;">808</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. You can put that aside. 3 A. I think you understand by what 4 we're doing here at this time, don't you? Do 5 I need to explain what -- 6 Q. No, no. 7 A. -- why it was delivered to 8 Congress? 9 Q. It's all good. 10 What is UEP's relationship with 11 Urner Barry? 12 A. There is no relationship. 13 Urner Barry is the market reporter for eggs 14 and some other commodities. And they -- 15 they're the only market reporter for eggs. 16 Q. They're the only market 17 reporter for eggs? 18 A. Right. 19 Q. They report on a nationwide 20 basis? 21 A. Yes. 22 Q. If I could just tender now as 23 another exhibit. 24 - - - 25 (Exhibit Gregory-98, Shell Egg</p>
<p style="text-align: center;">807</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 report and just this week we received a final 3 copy." 4 Now, did Tom Earley complete 5 that report? 6 A. This here? 7 Q. Yes. The Agralytica report. 8 A. Yes. 9 Q. Did Tom Earley produce the 10 ProMar report? 11 A. Yes. 12 Q. Now, the last sentence of that 13 paragraph says, "The attached report was 14 released yesterday to Congressional 15 officers." 16 A. Yes. 17 Q. Was that sent to congressmen? 18 A. It was delivered at least to 19 members of Congress, yes. 20 Q. Did the UEP pay for that 21 report? 22 A. I'm sure we did. I don't know. 23 MS. LEVINE: Mr. Gregory, you 24 should only testify to what you know. 25 BY MR. SLIDDERS:</p>	<p style="text-align: center;">809</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL Marketing Committee October 11, 2006 3 San Antonio, TX marketing material, 4 Bates UE0210026 - UE0210047, was 5 marked for identification.) - - - 7 MR. SLIDDERS: Exhibit 98. 8 BY MR. SLIDDERS: 9 Q. Can you identify that document? 10 A. It is -- 11 MS. ANDERSON: Read the Bates range. 13 MR. SLIDDERS: UE0210026 to 14 UE0210047. 15 THE WITNESS: It is the meeting 16 materials for a Shell Egg Marketing 17 Committee October 2006. 18 BY MR. SLIDDERS: 19 Q. Did you put this package 20 together? 21 A. I'm sure I did. 22 Q. If we could turn to page 11, 23 page 11 of the document. I think it's 24 actually on the top of the document, the page 25 number for some reason.</p>

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<p style="text-align: right;">810</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. Do you see the heading of that 4 page says, "Retail Feature Price For Cage and 5 Non-Cage Eggs"? 6 A. Yes. 7 Q. Then under it, it says, 8 USDA-AMS gathers information from 17,000 9 retailers nationwide. The prices shown below 10 are the advertised prices for shell eggs to 11 consumers at major retail supermarkets -- 12 major retail supermarket outlets. Do you see 13 that? 14 A. Yes. 15 Q. Now, do you put this -- this 16 would be used -- and this information would 17 be used by the Shell Egg Marketing Committee? 18 A. I put this together as a -- for 19 information for the Shell Egg Marketing 20 Committee. 21 Q. Earlier today I think you 22 testified that Don Bell tracked retail 23 prices. 24 A. Yes. 25 Q. Is this the sort of -- if we go</p>	<p style="text-align: right;">812</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 dated September 26, 2005, with Bates number 3 UE0212411. Did I have that wrong? No. 4 MS. LEVINE: Which number is it? 5 MR. SLIDDERS: Exhibit 99. 6 - - - 7 (Exhibit Gregory-99, 9/26/05 8 Letter, Bates UE0212411 - UE0212413, 9 was marked for identification.) 10 - - - 11 THE WITNESS: You did not give 12 me a copy. 13 MS. LEVINE: We're going to quiz 14 you. 15 THE WITNESS: Do you need this? 16 BY MR. SLIDDERS: 17 Q. Can you identify this letter? 18 A. Yes. I wrote the letter. 19 Q. Did you send it to Mr. Gary 20 Stoller of Stoller Farms? 21 A. Yes. Yes. 22 Q. Put that aside now. 23 This is going to be the easy 24 part. 25 - - -</p>
<p style="text-align: right;">811</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 back to this report, I believe that the 3 information in this report is from the USDA? 4 A. Yes. How I gather this, right 5 on USDA-AMS's Web site, they weekly report on 6 all regions of the country X number of 7 stores, I can't remember what it is, of what 8 the price of all categories of eggs are. 9 Now, where Don Bell got his retail egg prices 10 at, I don't know. 11 Q. But he did report on retail egg 12 prices to UEP? 13 A. Yes, he did. 14 MS. LEVINE: Object to the form 15 of the question. 16 THE WITNESS: Right. But I 17 think -- I think he's only -- probably 18 in that case I think he's only 19 tracking one category of eggs. I 20 don't know. 21 We're done with this one? 22 BY MR. SLIDDERS: 23 Q. Yes, sorry. We're done with 24 that one. 25 If I could pass you a letter</p>	<p style="text-align: right;">813</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 (Exhibit Gregory-100, 3/19/08 3 Letter, Bates NL003516 & NL003517, was 4 marked for identification.) 5 - - - 6 BY MR. SLIDDERS: 7 Q. I'm going to pass you 8 Exhibit 100, which is a -- entitled -- it's a 9 March 19, 2008, letter with Bates number 10 NL003516 to 3517. 11 A. I recognize it. 12 Q. Did you write it? 13 A. My signature is on it, so, yes. 14 Q. It was sent to all UEP members? 15 A. Yes. 16 Q. It was sent to all UEP members 17 in the course of your duties as a UEP 18 president? 19 A. It would have been. 20 Q. And the date of the letter is 21 March 19, 2008? 22 A. Yes. 23 Q. Thank you. Put that aside. 24 A. I feel like I'm missing 25 something here.</p>

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<p style="text-align: center;">814</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. LEVINE: Because you're not 3 a lawyer. 4 MR. SLIDDERS: Lucky you. 5 MS. LEVINE: Sometimes lawyers 6 ask question just for the record so 7 that they can confirm who wrote the 8 letter and the date. 9 THE WITNESS: That brings up 10 my -- there's two things that we have 11 too many -- too much of. One is 12 potholes and the other is attorneys. 13 - - - 14 (Exhibit Gregory-101, 2/6/07 15 E-mail, Bates MFI0004431 - MFI0004433, 16 was marked for identification.) 17 - - - 18 BY MR. SLIDDERS: 19 Q. This is Exhibit 101. It's 20 Bates stamped MFI0004431. 21 Do you recognize this e-mail? 22 Feel free to look through it. Sorry. 23 A. Yes, I have had e-mails from 24 Dr. Roland, so I would need to scan it to 25 know the details.</p>	<p style="text-align: center;">816</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 identification.) 3 - - - 4 BY MR. SLIDDERS: 5 Q. Let me just tender Exhibit 102. 6 A chain of e-mails, which is a chain of 7 e-mails with Bates number RWS 000011241. 8 Can you identify this document? 9 A. It looks to me like it's a flow 10 of e-mails. But, I guess, I'm going to have 11 to read some of it to recall what it was. 12 Q. That's okay, but you did 13 receive this e-mail? 14 A. Yes, it appears I did. 15 Q. And you received this e-mail in 16 the course of being vice president of UEP? 17 A. At that time I would have been 18 the vice president, yes. 19 Q. And you would have received 20 that on March 15, 2006? 21 A. Yes. 22 Q. Thank you. Put that aside. 23 MS. LEVINE: He's much quicker. 24 THE WITNESS: No, no. It's just 25 scaring me, I think one of these days</p>
<p style="text-align: center;">815</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Please, take your time. 3 A. (Reviewing document.) 4 Q. You received this e-mail on 5 February 6, 2007? 6 A. This is coming from a Dr. 7 Roland at his -- really come up with an idea 8 about how you could manage supply through 9 some sort of feeding type program. But I 10 never understood very well then, I never -- 11 still don't understand it. And we never 12 adopted any of -- UEP never adopted any of 13 it. I have my questions whether egg 14 producers did, either. 15 Q. But you received this e-mail? 16 A. It shows that I did, yes. 17 Q. You received this in your role 18 as president or vice president at that time 19 of UEP? 20 A. Yes. 21 Q. You can put that aside. 22 - - - 23 (Exhibit Gregory-102, E-mail 24 chain, Bates RWS 000011241 & 25 RWS 000011242, was marked for</p>	<p style="text-align: center;">817</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that I'm going to find myself in 3 court, he says, well, you know, I 4 showed you this. 5 BY MR. SLIDDERS: 6 Q. Could I just give you one more 7 exhibit. 8 - - - 9 (Exhibit Gregory-103, Animal 10 Welfare Report for 2003 Area Meetings, 11 Bates MFI0024405 - MFI0024422, was 12 marked for identification.) 13 - - - 14 BY MR. SLIDDERS: 15 Q. This is document number 16 MFI0024405 to MFI0024422. 17 Can you identify this document? 18 A. Yes. 19 Q. What is it? 20 A. It's a report on animal welfare 21 given at UEP area meetings in 2003. 22 Q. Did you prepare this report? 23 A. I'm sure that I did. 24 Q. You prepared this report as 25 vice president of UEP?</p>

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<p style="text-align: center;">818</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. You can put that aside, 4 Mr. Gregory. 5 A. I'm feeling very nervous 6 when -- 7 Q. Don't be nervous, Mr. Gregory. 8 MS. LEVINE: Counsel is really 9 doing this for evidentiary purposes. 10 - - - 11 (Exhibit Gregory-104, E-mail 12 chain, Bates NL00327492 & NL00327493, 13 was marked for identification.) 14 - - - 15 BY MR. SLIDERS: 16 Q. Just if I could give you 17 another exhibit, Mr. Gregory. Exhibit 104. 18 It is a chain of e-mails with a Bates stamp 19 NL00327492 to 493. 20 Can you identify this e-mail, 21 Mr. Gregory? 22 A. Yes. 23 Q. You received this -- you 24 drafted the first one and sent it on June 24, 25 2008?</p>	<p style="text-align: center;">820</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 VIDEOPHAGER: The time is 3 approximately 11:30 a.m. We are off 4 the record. 5 - - - 6 (A recess was taken.) 7 - - - 8 VIDEOPHAGER: The time is 9 approximately 12:10 p.m. This begins 10 tape four, volume three. We are back 11 on the record. 12 - - - 13 EXAMINATION 14 - - - 15 BY MS. LEVINE: 16 Q. Good afternoon, Mr. Gregory. 17 A. Good afternoon. 18 Q. As you know, my name is Jan 19 Levine, and I represent UEP and USEM in these 20 lawsuits. 21 A. Yes. 22 Q. I think we all appreciate your 23 stamina and for staying with us over three 24 days. We know it's not an easy thing, and 25 that you are answering the questions in the</p>
<p style="text-align: center;">819</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. And you received that 4 subsequent e-mail by Larry Seger later that 5 day? 6 A. Yes. 7 Q. And you both drafted the e-mail 8 and received the e-mail in the course of your 9 role as president of the UEP? 10 A. Yes. 11 Q. You can put that aside. 12 MR. SLIDERS: Mr. Gregory, I 13 have no further questions subject to 14 reserving my right to redirect later. 15 MS. LEVINE: Any other -- 16 MS. CAIN-MANNIX: We'll reserve 17 the rest of our time for rebuttal. 18 MS. LEVINE: Can we get a 19 reading on the time so we know how 20 much time -- 21 MR. OLSON: 40 minutes 22 remaining. 23 MS. LEVINE: 40 minutes 24 remaining? 25 THE WITNESS: 40?</p>	<p style="text-align: center;">821</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 best way you can recall the facts. It's now 3 your turn. I know you've been waiting a long 4 time, so I'm going to ask you some questions. 5 A. My mind is so cluttered, I 6 don't know whether I'm up or down. 7 Q. You can take a break whenever 8 you want, Mr. Gregory. 9 A. I'm fine. 10 Q. You can have a sip of water. 11 A. I'm fine. Let's go. 12 Q. You agreed with Mr. Olson 13 during his examination that the problem with 14 having a surplus or an over supply of eggs is 15 that it drives the price of eggs down. How 16 low can it drive the price of eggs down? 17 A. I guess that's speculating. I 18 don't know how low that is. 19 Q. Could it be below the cost of 20 production? 21 MR. OLSON: Objection to form. 22 THE WITNESS: Yes, it often is 23 below the cost of production. 24 BY MS. LEVINE: 25 Q. And have you observed that in</p>

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<p style="text-align: center;">822</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 your time in the egg industry? 3 A. Many times. 4 Q. And what happens when there is 5 a surplus and the prices go below cost as you 6 just described in your personal experience? 7 MR. OLSON: Objection to form. 8 THE WITNESS: There is very few 9 alternatives. In the shell egg 10 industry, we used to be able to sell 11 some of that surplus to the egg 12 breaking companies, but as they built 13 their own facilities for production, 14 that market dwindled considerably. So 15 then we're left with either reducing 16 the flock size or we're interested in 17 inquiries for exports. 18 BY MS. LEVINE: 19 Q. And export is just another 20 market for surplus eggs. Is that correct? 21 MR. OLSON: Objection to form. 22 THE WITNESS: That's right, yes. 23 BY MS. LEVINE: 24 Q. And in those instances where 25 egg farmers are forced into a below cost</p>	<p style="text-align: center;">824</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 you were talking about, were they voluntary? 3 A. They always were. 4 Q. Were producers required to 5 follow the recommendations? 6 MR. OLSON: Objection to form. 7 THE WITNESS: No. 8 BY MS. LEVINE: 9 Q. Was a producer ever penalized 10 for not following a supply recommendation? 11 MR. OLSON: Objection to form. 12 BY MS. LEVINE: 13 Q. You can answer. 14 A. No. 15 Q. Was any producer ever 16 prohibited from increasing its flock or its 17 production? 18 A. No. 19 Q. Did UEP follow up to make sure 20 that the producers follow any recommendation? 21 A. No. 22 Q. I want to show you -- take a 23 look at Gregory-25. Do you remember when Mr. 24 Olson showed you this document?</p>
<p style="text-align: center;">823</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 situation and farmers go out of business, 3 does that create a shortage of eggs? 4 MR. OLSON: Objection to form. 5 THE WITNESS: Eventually it 6 will, yes. 7 BY MS. LEVINE: 8 Q. And in those circumstances, 9 would consumers suffer? 10 A. Not at all. 11 Q. If there was a shortage of 12 eggs, would consumers suffer? 13 MR. OLSON: Objection to form. 14 THE WITNESS: In my lifetime of 15 50-some years in the egg industry, I 16 never know a time when there wasn't 17 enough eggs to fill the consumer 18 market. 19 BY MS. LEVINE: 20 Q. What food item is one of the 21 lowest priced and highest in protein? 22 MR. OLSON: Objection to form. 23 THE WITNESS: Eggs. 24 BY MS. LEVINE: 25 Q. On these recommendations that</p>	<p style="text-align: center;">825</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I know that he showed me this 3 document. 4 Q. Take a look at the last page, 5 Mr. Gregory. It's titled, "FINANCIAL IMPACT 6 OF ACTIONS TAKEN BY UEP/USEM TO ADDRESS 7 INDUSTRY ECONOMICS." 8 Do you see that page? 9 A. Yes, I do. 10 Q. And there's some discussion 11 about what was the impact of these actions? 12 A. Yes. 13 Q. What, if anything, did you do 14 when you wrote this document to determine 15 that the marketing committee's and price 16 discovery committee's recommendation caused 17 an increase in the Urner Barry quote? 18 MR. OLSON: Objection to form. 19 THE WITNESS: I'm simply using 20 the market quote issued by Urner Barry 21 and making comparisons to that. 22 BY MS. LEVINE: 23 Q. Could other factors have been 24 responsible for the increase in price? 25 A. Yeah, there always is.</p>

<p style="text-align: center;">826</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Lots of different factors. 3 Right? 4 A. Yes. 5 MR. OLSON: Objection to form. 6 BY MS. LEVINE: 7 Q. None of which you considered in 8 doing this document. Is that correct? 9 MR. OLSON: Objection to form. 10 THE WITNESS: That's correct. 11 BY MS. LEVINE: 12 Q. Did you do anything to 13 determine if other factors were responsible? 14 A. No. 15 Q. What happened to the flock 16 side -- strike that. 17 What happened to the flock size 18 nationwide between 1999 and 2008? 19 MR. OLSON: Objection to form. 20 THE WITNESS: I'm a little bit 21 confused because he's objecting to 22 every question. 23 BY MS. LEVINE: 24 Q. That's okay. 25 A. And I'm not --</p>	<p style="text-align: center;">828</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 sir? 3 A. No, they were not. 4 Q. Were they disclosed to the 5 government? 6 A. Yes, they were. 7 Q. Were they reported in the 8 United Voices? 9 A. Yes, they were. 10 Q. Did you inform the USDA about 11 the supply recommendations that were made 12 from time to time? 13 A. From time to time, but 14 oftentimes there was a USDA person at the 15 meetings as well. 16 Q. At the meetings where the 17 recommendations were actually made. Is that 18 correct? 19 A. Yes. 20 Q. And did a USDA official or 21 government official that attended those 22 meetings ever complain to you about those 23 recommendations? 24 A. Not one time. 25 Q. Anybody ever tell you it was an</p>
<p style="text-align: center;">827</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. He doesn't like my question. 3 You just go ahead and answer to the best of 4 your ability. 5 A. They seem pretty 6 straightforward questions, that why I'm 7 having trouble. So will you ask a question? 8 Q. I'm going to ask again. What 9 happened to flock size nationwide between 10 1999 and 2008? 11 MR. OLSON: Same objection. 12 THE WITNESS: It had its natural 13 monthly inventory ups and downs, but 14 in repairing -- comparing 1999 with 15 2008, the 2008 flock was considerably 16 larger than the 1999 flock. 17 BY MS. LEVINE: 18 Q. And what happened to egg 19 production nationwide between 1999 and 2008? 20 MR. OLSON: Same objection. 21 THE WITNESS: It increased. 22 BY MS. LEVINE: 23 Q. These recommendations that Mr. 24 Olson spent a lot of time talking about over 25 the last two days, were they kept a secret,</p>	<p style="text-align: center;">829</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 antitrust violation? 3 A. No. 4 MR. OLSON: Objection to form. 5 BY MS. LEVINE: 6 Q. Anybody from the USDA or the 7 government ever try to stop you? 8 A. No. 9 MR. OLSON: Objection to form. 10 BY MS. LEVINE: 11 Q. Anybody from the USDA or the 12 government ever stand up and tell you that 13 this was a violation of the law? 14 A. No. 15 Q. Did you rely on that fact in 16 doing the supply recommendations that the 17 government was in the room? 18 A. Ask the question -- 19 Q. I'll rephrase it. 20 A. Yeah. 21 Q. Did it give you comfort that 22 the government was in the room when you were 23 handling UEP business? 24 A. Yes. 25 Q. I'm going to show you a</p>

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<p style="text-align: center;">830</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 document, and I'm going to mark it 3 Gregory-105. 4 - - - 5 (Exhibit Gregory-105, 2/1/05 6 Letter, Bates UE0145966 - UE0145969, 7 was marked for identification.) 8 - - - 9 BY MS. LEVINE: 10 Q. I'd like you to take a look at 11 that document, Mr. Gregory. 12 A. Yes. 13 Q. Can you identify that document 14 for us, please? 15 A. Yes. 16 Q. What is this document? 17 MS. LEVIN: Could we have the 18 Bates numbers? 19 MR. OLSON: Could you wait for 20 us to get the document before you 21 start asking about it? 22 MS. LEVINE: UE0145966 through 23 UE0145 -- sorry, 145969. 24 BY MS. LEVINE: 25 Q. Take a look at that document,</p>	<p style="text-align: center;">832</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I must be going to wrong way. 3 Yeah. 66. Yes. 4 Q. I'm going to direct your 5 attention, Mr. Gregory, on your letter to the 6 government which has been marked as 105, 7 direct your attention to page 3 of that 8 letter. 9 MR. OLSON: Sorry, we're back on 10 105 now? 11 MS. LEVINE: Yes. 12 THE WITNESS: Yes. 13 BY MS. LEVINE: 14 Q. Look at page 3 of that letter. 15 A. Yes. 16 Q. Do you see the paragraph 17 beginning on "Based on information available 18 at the economic summit..."? 19 Do you see that, sir? 20 A. Yes. Uh-huh. 21 Q. Why don't you just read that 22 paragraph to yourself for a minute. 23 A. (Reviewing document.) 24 Okay. 25 Q. And can you take a look at</p>
<p style="text-align: center;">831</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Mr. Gregory. 3 A. Okay, I've looked at it. 4 Q. Can you identify that document? 5 A. Yes. 6 Q. What is it? 7 A. It is a letter to Under 8 Secretary William Hawks at USDA's marketing 9 regulatory programs. 10 Q. Did you draft this letter? 11 A. Yes. 12 Q. Can you read for the record who 13 signed this letter? 14 A. Roger Deffner, the UEP 15 chairman; Wayne Mooney, the UEP marketing 16 chairman; and myself as senior vice 17 president. 18 Q. Can you also take out 19 Gregory-66 and put it right next to you? 20 MR. OLSON: Are we done with 21 105? 22 MS. LEVINE: No. 23 THE WITNESS: 66. 24 BY MS. LEVINE: 25 Q. At the bottom.</p>	<p style="text-align: center;">833</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Gregory-66 that's right next to you that you 3 pulled out? 4 A. Yes. 5 Q. Which was the recommendations 6 made -- 7 A. Yes. 8 Q. -- at the economic summit that 9 you spoke about -- 10 A. Yes. 11 Q. -- during these two days of 12 testimony? 13 And can you compare those two, 14 sir? 15 A. I think they're the same. 16 Q. So I just want to be clear that 17 the recommendations that were discussed at 18 the economic summit in 2004, and I think Mr. 19 Olson spoke to you about some intention forms 20 or some form, were explained fully by you in 21 this letter to William Hawks, Under Secretary 22 of Marketing and Regulatory Programs in 23 Washington. Is that correct? 24 MR. OLSON: Objection to form. 25 THE WITNESS: That's correct.</p>

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<p style="text-align: center;">834</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MS. LEVINE: 3 Q. And did Mr. Hawks ever complain 4 to you about those recommendations? 5 A. No. 6 Q. Did he ever say they violated 7 the law? 8 A. No. 9 Q. Did he ever say that producers 10 should not take such actions to reduce the 11 flock during over supply periods? 12 A. No. 13 Q. Why did you include those 14 details in this bonus buy request to Under 15 Secretary Hawks? 16 A. The purpose of the commodity 17 purchase program is to purchase surplus 18 agricultural products for the school lunch 19 program, the needy food program, any other 20 government assistance programs. So what most 21 often they wanted to know was, have you first 22 done things yourself to address the issue 23 rather than just come to the government and 24 ask them to bail you out. 25 Q. The issue being what?</p>	<p style="text-align: center;">836</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. What was the purpose of you 3 including these recommendations in your 4 letter to Senator Hawks? 5 MR. OLSON: Same objection. 6 THE WITNESS: I wanted him to 7 know that our Marketing Committee had 8 made these recommendations as a point 9 of reference that we were trying do 10 something to address this over supply 11 problem. 12 BY MS. LEVINE: 13 Q. And over your career and your 14 time at UEP, have you written similar letters 15 or advised the government before on the same 16 types of issues? 17 A. Yes. 18 Q. And have you ever, in all of 19 those times had any -- received any complaint 20 from any government officials about those 21 recommendations? 22 A. No. 23 Q. In your mind, were they 24 encouraged? 25 MR. OLSON: Objection to form.</p>
<p style="text-align: center;">835</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. The issue being that we had too 3 many old hens, too many hens, and by this 4 time the fowl processors that were once our 5 marketers were not buying hens, not paying 6 for them, we were actually having to pay to 7 get rid of them and we were saying to Mr. 8 Hawks, if you will do a bonus buy on fowl 9 meat, that this would be something that these 10 fowl processor we think would bid upon and 11 then we would have a market for hens they 12 were going to take from the egg farmer. 13 Q. So before the government would 14 increase the bonus buy, the producers were to 15 take self help. Is that right? 16 A. They wanted to see evidence 17 that you had tried to take care of yourself 18 first. 19 Q. And that is why you included as 20 proof of taking care of yourself that you 21 included the recommendations from the 2004 22 economic summit? 23 MR. OLSON: Objection to form. 24 THE WITNESS: Yes. 25 BY MS. LEVINE:</p>	<p style="text-align: center;">837</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. LEVINE: Strike that 3 question. 4 THE WITNESS: Are you done with 5 that one? 6 BY MS. LEVINE: 7 Q. Yeah. Put it away. 8 You testified just this 9 morning -- you can put it at the end, then 10 I'll ask you a question so you don't get them 11 out of order. 12 A. Right. Okay. 13 Q. You testified just this morning 14 that Don Bell shared market statistics with 15 UEP. Remember that testimony? 16 A. Yes. 17 Q. Who else did Don Bell share 18 market statistics with? 19 A. I don't know. I mean, it 20 just -- generally the egg industry, anyone 21 that wanted his statistics, and I don't know 22 the names necessarily of all the people. 23 Q. Were they widely disseminated? 24 A. Oh, yeah. Absolutely. Yes. 25 Q. He was university based. Is</p>

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<p style="text-align: center;">838</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that correct? 3 A. Yes. 4 Q. Did the government ever rely on 5 his statistics or use his statistics? 6 MR. OLSON: Objection to form. 7 THE WITNESS: That, I don't 8 know. 9 BY MS. LEVINE: 10 Q. In turning to animal welfare 11 issues, what was the purpose of UEP 12 commissioning the Scientific Advisory 13 Committee? 14 A. I don't know what the series of 15 events was, but we had watched in Europe 16 where the European Union had passed 17 legislation that was forcing a change in the 18 housing systems in Europe. We didn't believe 19 that was based upon science. It was driven 20 by animal activists. But our interest was 21 the fact that if we needed to make -- and we 22 were fearful that's coming here. If we 23 needed to make changes, then we should do it 24 based upon what science told us that we 25 needed to do rather than being pressured into</p>	<p style="text-align: center;">840</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. You want names? 3 Q. Yes. 4 A. Okay. If I can recall the 5 names. Adele Douglass who was with the 6 American Humane Association; Dr. Joy Mench, 7 she was with University of California Davis; 8 Dr. Janice Swanson who at that time was at 9 Kansas State University; Dr. Ruth Newberry 10 who at that time was with -- who is still 11 with Washington State University; Dr. 12 Patricia Hester who is at Purdue University. 13 Initially he also had Margaret Shea-Moore who 14 was with the USDA, and I don't know what 15 division; Dr. Larry Stanker who was with the 16 USDA, and I don't recall what division. But 17 anyway, and I believe Bill Chase who was a 18 veterinarian from Iowa; and Don Bell from the 19 University of California. 20 Years later, that committee 21 changed, and some -- I know Margaret 22 Shea-Moore and Larry Stanker, because of 23 their careers with USDA, Margaret Shea-Moore 24 had something with her husband moving or 25 whatever it was, and Larry Stanker who had</p>
<p style="text-align: center;">839</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 it by animal activist campaigns. And they, 3 the animal activists, were targeting our 4 customers by doing all kinds of things. Just 5 as an example Trader Joe's had received over 6 30,000 e-mails in two days' time and it 7 destroyed their e-mail systems. So they were 8 using all kinds of boycott, or not boycott, 9 but using all kinds of tactics to scare our 10 customer. 11 Q. How were the members of the 12 Scientific Advisory Committee selected? 13 A. We met with Dr. Jeff Armstrong 14 who at that time was at Purdue University and 15 we explained to him what our problem was. He 16 was interested in animal welfare, not just 17 egg layers, but animal welfare of all farm 18 animals. We told him what our problem was 19 and said we would like to look at something 20 different, would he mind putting together a 21 committee to look at our industry and come 22 back to us and tell us if we -- changes 23 needed to be made. 24 Q. Who did Dr. Armstrong select to 25 sit on the Scientific Advisory Committee?</p>	<p style="text-align: center;">841</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 been responsible for discussing food safety 3 with us, moved out of the Texas A&M position 4 he's in and so forth. Then we added -- Dr. 5 Armstrong added; Dr. Gail Golab who was with 6 the American Veterinary Medical Association; 7 and Dr. Paul Thompson who is a -- anyway, Dr. 8 Paul Thompson at Michigan State University. 9 I'm sorry if I've missed somebody. 10 Q. You know a lot better than I 11 did, thank you, Mr. Gregory. 12 Can you take a look at 13 Exhibit 20? 14 A. Yes. 15 Q. I think over the past two days 16 we've -- Mr. Olson asked you some questions 17 about Gregory-20. Can you tell me what that 18 document is? 19 A. That is the -- at that time 20 this is the completed recommendations that 21 the Scientific Committee had presented, I 22 think they presented it probably at our 23 October org meeting, to UEP in 2000. 24 Q. Can you take a look at page 2 25 of that document, right after the cover page?</p>

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<p style="text-align: center;">842</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Okay. Yes. 3 Q. The second paragraph. It says 4 in about the end of the second paragraph, UEP 5 did provide one staff member and one producer 6 as ex officio members of the committee. 7 Do you see that, sir? 8 A. Yes, I do. 9 Q. And who is the staff member? 10 A. That was me. 11 Q. And what was your position, 12 what was your title at that time at UEP? 13 A. Senior vice president. 14 Q. And a producer as ex officio 15 members, who was the producer? 16 A. Barrie Wilcox. 17 Q. And what was his title at the 18 time? 19 A. I think at that -- we -- 20 Q. If you remember. 21 A. You know, I don't know. At one 22 time he was the Chairman of the Board, 23 another time he was Chairman of Animal 24 Welfare Committee. I don't know what his 25 position at that time was.</p>	<p style="text-align: center;">844</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 our request was that they come back to 3 UEP's board with recommendations that 4 they felt was important for our 5 industry. 6 BY MS. LEVINE: 7 Q. Do you think the Scientific 8 Advisory members would have agreed to serve 9 if the program was a pretext for reducing 10 supply? 11 MR. OLSON: Objection to form. 12 THE WITNESS: Absolutely not. 13 These are highly respected people and 14 it would be an insult to them if they 15 thought that. It would end their 16 careers if it -- 17 BY MS. LEVINE: 18 Q. What was the role of the 19 Producer Committee for Animal Welfare? 20 A. We recognized early on that 21 just simply a set of scientific 22 recommendations left as they were was okay. 23 But it did not complete what was our goal. 24 So the Producer Committee was formed to take 25 the Scientific Committee recommendation and</p>
<p style="text-align: center;">843</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Do you know what ex officio 3 means? 4 A. It may mean something different 5 than I think it is, but I apologize if I'm 6 not right. I think of it as a nonvoting 7 participant or member, whatever the word is. 8 I don't know. 9 Q. Did either you or Mr. Wilcox 10 ever vote at the Scientific Committee? 11 A. No, our role was to take and be 12 a liaison between the Scientific Committee 13 and UEP's committee and board. 14 Q. What was the Scientific 15 Advisory Committee's role? 16 MR. OLSON: Objection to form. 17 THE WITNESS: It was to review 18 all the available literature, both 19 here in this country and in Europe, on 20 the poultry, the production practices 21 of egg laying hens. And do whatever 22 they want to do, they could visit 23 producers, they could visit equipment 24 manufacturers. There is no limit to 25 what they could do. And ultimately</p>	<p style="text-align: center;">845</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 see if they could use those recommendations 3 to create an industry program. 4 Q. So was the Producer Committee 5 to implement the guidelines? 6 MR. OLSON: Objection to form. 7 THE WITNESS: No. The Producer 8 Committee was to try to draft a 9 program out of that and ultimately get 10 approval from the Board of Directors. 11 BY MS. LEVINE: 12 Q. Were all the members of the 13 Producer Committee, the members, UEP members? 14 A. Yes. 15 Q. Did the Producer Committee have 16 contributors? 17 A. Yes. At different times. I 18 know that Jason Wadsworth from Wegmans 19 Grocery -- well, they owned about 600,000 20 layers and they were a UEA producer/packer 21 member, but Jason sat there as a vehicle by 22 which we could gather information about what 23 the retail market would accept and so forth. 24 And at other times I know that Jason Whaley 25 from Country Creek Farms who was the major</p>

<p style="text-align: center;">846</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 conduit to Walmart sat in that same position. 3 Q. Was it important for the 4 Producer Committee to understand the needs of 5 those two gentlemen, the contributors? 6 A. Absolutely, because there, 7 again, is absolutely no reason to develop a 8 program if that program is not going to be 9 accepted by the marketplace. 10 Q. Could non-committee members 11 bring motions before the Producer Committee? 12 A. No. 13 Q. And could non-UEP members vote 14 at the Producer Committee? 15 A. No, they could not. I forgot 16 one person. Peter Clark who was on the 17 Canadian Egg Market Agency's board and is now 18 their chairman sat as a nonvoting member 19 because of the fact that Canada and -- wanted 20 to have somewhat similar guidelines as what 21 the U.S. did have because of similar 22 customers across country boundaries. So, I'm 23 sorry, I missed him before. 24 Q. Do you recall that you had a 25 long discussion with Mr. Olson over the last</p>	<p style="text-align: center;">848</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Okay. 3 Q. I'm going to mark this document 4 as Gregory-106. It is UE0225056 to 5 UE0225085. 6 - - - 7 (Exhibit Gregory-106, United Egg 8 Producers Animal Husbandry Guidelines 9 for U.S. Egg Laying Flocks, Bates 10 UE0225056 - UE0225085, was marked for 11 identification.) 12 - - - 13 BY MS. LEVINE: 14 Q. Mr. Gregory, are you familiar 15 with this document? 16 A. Yes, I am. 17 Q. Can you turn to page 3 of the 18 guidelines in front of you? 19 A. Yes. 20 Q. What is this document, 21 Mr. Gregory? 22 A. This is the Animal Husbandry 23 Guidelines. This is the -- this is our 24 Animal Welfare Program. 25 Q. Can you look at page 3 of that</p>
<p style="text-align: center;">847</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 day or two about the Scientific Advisory 3 Committee members' names being associated -- 4 A. Yes. 5 Q. -- with the UEP certified 6 program? 7 A. Yes. 8 Q. Do you remember that 9 discussion? 10 A. Uh-huh. 11 Q. And you told him that the 12 Scientific Advisory Committee members' names 13 were put on the guidelines at some point, but 14 he didn't show you that later document to 15 establish that fact. Is that correct? 16 A. That's correct. 17 Q. I'm going to mark the next 18 document as the 2007 and 2008 Animal Welfare 19 Guidelines. 20 A. I'm getting mixed up as to what 21 goes where. 22 Q. You know what, there's so many 23 documents you have there, Mr. Gregory, I'm 24 going to mark a document so you can just move 25 those over.</p>	<p style="text-align: center;">849</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 document? 3 A. Right. 4 Q. About the middle of the page, 5 are these the members of the Scientific 6 Advisory Committee? 7 A. At that time, yes. 8 Q. Did they ever object to be 9 putting in this -- their names appearing on 10 this document? 11 A. This document here? 12 Q. Yes. 13 A. No. No. 14 Everything is out of order 15 again now. 16 MR. OLSON: Don't worry about 17 it. 18 BY MS. LEVINE: 19 Q. Mr. Gregory, put the guidelines 20 back in front of you, I'm going to ask you 21 another couple of questions. On page 3 -- 22 MR. OLSON: 106 still? 23 MS. LEVINE: Yes. 24 BY MS. LEVINE: 25 Q. -- at the end of the third</p>

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<p style="text-align: center;">850</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 paragraph, what do the guidelines say about 3 the relationship between the Scientific 4 Advisory Committee's recommendations and the 5 guidelines themselves?</p> <p>6 A. That last paragraph there?</p> <p>7 Q. Yes.</p> <p>8 A. You want me to read it or just --</p> <p>9 Q. Yes, and your understanding.</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. You can go ahead and read it.</p> <p>13 A. "The guidelines presented in 14 this publication represent the 15 recommendations of the Scientific Advisory 16 Committee for best husbandry practices to 17 assure the welfare of hens managed under cage 18 and cage free conditions."</p> <p>19 Q. And is that your understanding?</p> <p>20 A. Yes.</p> <p>21 Q. Did UEP -- you can close that 22 document. I'm going to come back to it, but 23 I'm going to ask you another couple of 24 questions.</p> <p>25 Did UEP work with others in</p>	<p style="text-align: center;">852</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 symposium type thing for Kroger, and I 3 know Kroger has always been a 4 supporter of the program.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Did retailers support the UEP 7 certified program?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: Yes. Otherwise 10 the program would have never been a 11 success.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Can you take out Gregory-103 14 that was just shown to you today by 15 plaintiff's counsel? I think it's probably 16 on -- going to be on the bottom.</p> <p>17 A. See I've got it all mixed up 18 now. 103.</p> <p>19 Q. 103. Maybe the court reporter 20 can help you out. I think the court reporter 21 is going to help you out.</p> <p>22 A. Just that September 2000 -- 23 sorry about this. I got them all mixed up 24 now. 103, yes.</p> <p>25 MR. OLSON: Sorry, could you</p>
<p style="text-align: center;">851</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 developing the UEP certified program?</p> <p>3 A. Yes.</p> <p>4 Q. And who were those other 5 individuals or entities?</p> <p>6 A. Food and Marketing Institute, 7 and -- who we refer to as FMI, and the 8 National Council of Chain Restaurants who we 9 refer to as NCCR.</p> <p>10 Q. How about the USDA and Validus?</p> <p>11 A. We needed to find a way in 12 which to make sure that we had a credible 13 program, and so we urged USDA originally to 14 be an auditing firm. We felt it was 15 important to have a government agency doing 16 the auditing as well as an independent agency 17 doing the auditing. So USDA and Validus then 18 worked with us and became the auditing firms.</p> <p>19 Q. And did Kroger work with you?</p> <p>20 MR. OLSON: Objection to form.</p> <p>21 THE WITNESS: Kroger, I don't 22 recall. I do know that there was at 23 least one time that Kroger attended a 24 meeting. I know at one time we held a 25 special as farm tour and like</p>	<p style="text-align: center;">853</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 guys just hold on one second?</p> <p>3 BY MS. LEVINE:</p> <p>4 Q. I ask you to -- Gregory-103 was 5 already identified this morning. Can you 6 turn to the page stamped MFI0024413?</p> <p>7 A. Yes.</p> <p>8 Q. Can you read to me what this 9 page represents?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: It says, Retailers 12 Which Are Supportive of UEP's Animal 13 Welfare Guidelines.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. What did you understand that to 16 mean?</p> <p>17 A. I don't know what the year of 18 this was, but at any rate, we had been 19 informed by egg suppliers, egg farmers, that 20 these retailers were requiring UEP certified 21 eggs and then the question was, were they 22 also using the logo on their cartons.</p> <p>23 Q. And if there is a yes in that 24 column, what does that mean?</p> <p>25 A. That meant that they were</p>

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<p style="text-align: right;">854</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 requiring their egg suppliers to be UEP 3 certified.</p> <p>4 Q. I want to ask you just about a 5 couple of supplier retailers on this list. 6 Albertsons?</p> <p>7 A. Yes.</p> <p>8 Q. Did Albertsons support the UEP 9 Animal Welfare Guidelines?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. Go down to Giant Food, please.</p> <p>12 A. Yes.</p> <p>13 Q. Did Giant Food support the UEP 14 Animal Welfare Guidelines?</p> <p>15 A. Yes.</p> <p>16 Q. How about HEB?</p> <p>17 A. Yes.</p> <p>18 Q. Did they support the UEP Animal 19 Welfare Guidelines?</p> <p>20 A. Yes.</p> <p>21 Q. How about Kroger, did Kroger 22 support the UEP Animal Welfare Guidelines?</p> <p>23 A. Yes.</p> <p>24 Q. Price Shopper, did Price 25 Shopper support the UEP Animal Welfare</p>	<p style="text-align: right;">856</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 for reducing supplies?</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: I think to accuse 5 people of that would be an insult. 6 The answer is no.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. Now, for a producer to 9 implement the guidelines for animal welfare, 10 did the producer's cost increase at times?</p> <p>11 A. Yes.</p> <p>12 Q. And what effect did that have 13 on price?</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 THE WITNESS: I don't know, 16 because we don't know whether the cost 17 was ever able to be passed on.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. Would you take out, Mr. Gregory, 20 Exhibit 35.</p> <p>21 A. I have it.</p> <p>22 Q. Can you turn to page 2 of 23 Gregory-35.</p> <p>24 A. Yes.</p> <p>25 MR. OLSON: This is United</p>
<p style="text-align: right;">855</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Guidelines? Sorry, Price Chopper.</p> <p>3 A. Price Chopper indicates that 4 we're not sure.</p> <p>5 Q. How about Publix?</p> <p>6 A. Yes.</p> <p>7 Q. They supported the UEP Animal 8 Welfare Guidelines?</p> <p>9 A. Yes.</p> <p>10 Q. How about Winn-Dixie?</p> <p>11 A. Yes.</p> <p>12 Q. Did Winn-Dixie support the UEP 13 Animal Welfare Guidelines?</p> <p>14 A. Yes.</p> <p>15 Q. What about McDonald's?</p> <p>16 MR. OLSON: Objection to form.</p> <p>17 THE WITNESS: McDonald's had 18 their own program. They had taken 19 much and most of all the science from 20 UEP's Scientific Advisory Committee to 21 develop their own program.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. Do you think all of these 24 people and all of these entities would have 25 been involved if the program was a pretext</p>	<p style="text-align: right;">857</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Voices. Right?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MS. LEVINE: Yes, March 25, 5 2002, United Voices.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Why did UEP think it was 8 important for producers to implement the 9 guidelines even if their customers were not 10 yet demanding the guidelines?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: In our view, we 13 felt that it was important for our 14 industry finally to have a program 15 already in place that addressed animal 16 welfare issues. And so when a 17 customer was now being targeted by 18 animal activists, they knew where to 19 turn to for help and to, you know, 20 change, you know, their specifications 21 for buying.</p> <p>22 So it was not -- it was not 23 necessarily done for the retailer, but 24 we needed retailer support. We needed 25 retailer's input into this. But we</p>

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<p style="text-align: center;">858</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 were going to go ahead even if some 3 retailers were not ready for it. 4 BY MS. LEVINE: 5 Q. Was it a dynamic process to 6 develop these guidelines? 7 A. It was a series of many 8 meetings and further refining the guidelines 9 as new research came about or new things were 10 learned, that needed to be implemented in 11 order to manage as such the program. So, 12 yes, it was a very dynamic thing, and it was 13 watched by -- throughout the world. Our 14 scientists became world known because of 15 this. 16 Q. And are you proud of the 17 program, Mr. Gregory? 18 A. Honestly in my 50-some years in 19 the egg industry, I have never been more 20 proud of anything than this. 21 Q. Did developing of the program 22 bring together all different sectors of the 23 egg industry for this standard? 24 A. Yes. 25 Q. Can you look at Gregory-5?</p>	<p style="text-align: center;">860</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 and all those kind of things. I was 3 arguing that the marketplace relied 4 upon such, upon science-based 5 programs. 6 BY MS. LEVINE: 7 Q. Did the guidelines -- you can 8 put that document away, Mr. Gregory. 9 Did the guidelines place any 10 restrictions at all on the building of new 11 houses? 12 A. Absolutely not. 13 Q. Was there any agreement among 14 certified producers not to build new houses? 15 A. Absolutely not. 16 Q. Take a look at Gregory-42. 17 A. I've got it. 18 Q. Do you recall that Mr. Olson 19 referenced your warning on the last page in 20 regard to the building of new houses? The 21 top of the last page. 22 A. "Word Of Caution," is that the 23 title? 24 Q. Yes. 25 A. Yes.</p>
<p style="text-align: center;">859</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. That must be on the other end 3 somewhere. Sorry about that. I got them all 4 mixed up. Okay. 5 Q. In Gregory-5, can you turn to 6 the last page? 7 A. Yes. 8 Q. What did you mean by "The 9 marketplace is the appropriate place to 10 establish science-based standards that will 11 allow consumers to make their own choices"?</p> <p>12 MR. OLSON: Objection to form. 13 THE WITNESS: Well, if I can 14 explain to you that at this hearing 15 before the subcommittee of the 16 Livestock Dairy and Poultry Committee, 17 this was a hearing called in which I 18 provided testimony, and sitting at the 19 same table giving testimony was Wayne 20 Pacelle, the president and CEO of the 21 Humane Society of the United States. 22 He and I had a difference of opinion 23 about animal welfare and -- and his 24 was a, more of it should be, you know, 25 as such consumer demanding cage free</p>	<p style="text-align: center;">861</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. And at that time you wanted to 3 explain something, but at that time Mr. Olson 4 wouldn't let you? 5 A. Yes. 6 MR. OLSON: Objection to form. 7 BY MS. LEVINE: 8 Q. What did you want to explain? 9 A. Well, when this was laid out in 10 a phase-in schedule, it was done so 11 recognizing that in order to increase this 12 space per bird in the house, you would lose 13 some birds in those existing housing. We 14 also knew that you were going to need to 15 service your customers. And in order to do 16 so, at some point in time you were going to 17 need to build new housing to make up for 18 this -- for these number of birds you lose in 19 an individual house. 20 So what I'm recognizing that I 21 think here's what I'm saying, and I'm saying 22 don't make a mistake to build new -- building 23 new facilities too quickly. Try to manage 24 this so that you're building it as need be 25 type of thing.</p>

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<p style="text-align: right;">862</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Did you ever tell anyone not to 3 build a new facility? 4 A. No. No. 5 Q. Did the guidelines require 6 producers to reduce their flock size? 7 A. The UEP certified program 8 required them to increase the space per bird 9 in cages. It did not require them to reduce 10 their overall flock size. 11 Q. Did the guidelines place any 12 restrictions on any producer's flock size? 13 A. No. 14 Q. Did the guidelines require 15 producers to reduce chick hatch? 16 A. No. 17 Q. Did the guidelines place any 18 restriction on any producer's chick hatch? 19 A. No. 20 Q. What happened to flock size 21 since the certified program began? 22 MR. OLSON: Objection to form. 23 THE WITNESS: It has increased 24 considerably. 25 BY MS. LEVINE:</p>	<p style="text-align: right;">864</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 page 3 of this document. 3 A. Yes. 4 Q. You answered, I think that 5 what -- that what he analyzed there is 6 probably true. What do you mean by that? 7 A. Well, the industry -- see, when 8 I was first in the industry, first several 9 years, we measured our, not our success, but 10 we measured things on a per bird basis, we 11 were getting how many eggs per bird, what was 12 our feed conversion per bird, what was our -- 13 you know, what was -- everything was measured 14 on a per bird basis. And after the egg 15 industry come along in 1960s and we're into 16 this several years and so forth, we then 17 begin to find egg producers, in my opinion, 18 having very little regard for welfare or for 19 the individual performance. What they were 20 trying to do is maximize the revenue coming 21 out of the entire house. And in some cases 22 they were putting birds in cages as little -- 23 and providing them with as little as 24 43 square inches. What this point is saying, 25 that if the industry did nothing more, he</p>
<p style="text-align: right;">863</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Mr. Gregory, can you look at 3 Gregory -- the document marked Gregory-11? 4 A. Let's see if I'm going in the 5 right direction. Nope. It's in that one. 6 Yes, I have it. 7 Q. I think you testified this 8 morning -- can you look at the page 3 of that 9 document? 10 A. Yes. 11 Q. I think you testified this 12 morning that at one point in the industry 13 producers were, I think you used the word 14 cramming or shoving chickens into cages. Do 15 you remember that? 16 A. Yes. 17 Q. In response to one of Mr. 18 Olson's questions, he asked you about the 19 point number 4 on this document. Do you see 20 that -- 21 A. Yes. 22 Q. -- about Don Bell? 23 A. Yes. 24 Q. Strike that question. 25 He asked you about number 4 on</p>	<p style="text-align: right;">865</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 said it's estimated that 15 to 20 percent of 3 the nation's houses are less than 48 square 4 inches. If the industry does nothing more 5 than go to 48 inches, it would remove 6 millions of birds. 7 Q. That is in regard to a cage -- 8 A. Yes. 9 Q. -- a single cage. Is that 10 correct? 11 MR. OLSON: Objection to form. 12 THE WITNESS: Yes, that is true. 13 BY MS. LEVINE: 14 Q. Now, throughout your testimony, 15 you have been very careful when talking about 16 reducing flocks to point out that you were 17 talking about per cage. Isn't that right, 18 sir? 19 MR. OLSON: Objection to form. 20 THE WITNESS: I'm talking about 21 providing more space per bird within 22 the individual cages. 23 BY MS. LEVINE: 24 Q. That has nothing to do with the 25 number of cages, does it?</p>

<p style="text-align: center;">866</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. No. No. 3 Q. So taking the birds out of a 4 cage is not related to the overall flock 5 numbers. Is that correct? 6 A. Not at all. 7 Q. In fact, from the Animal 8 Welfare Program itself, did producers learn 9 that hens actually produce more eggs if there 10 are less hens in a cage.</p> <p>11 MR. OLSON: Objection to form. 12 THE WITNESS: As the Scientific 13 Committee told me as they were working 14 on their recommendation and at times I 15 would be trying to represent producers 16 and challenge them on these things, 17 and they told me at the time, said 18 give this some time, what you will 19 find as you do these things, you will 20 get more eggs per hen, you will have 21 lower mortality, et cetera. What we 22 found very soon on, that the eggs per 23 hen on an annual basis increased 24 substantially, the livability improved 25 so much it was beyond people's belief.</p>	<p style="text-align: center;">868</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 now. 3 Q. I think it was in connection 4 with the third point under C. Does that help 5 refresh your recollection at all about what 6 you wanted to say? 7 A. I apologize, I don't recall. 8 Q. I was just giving you an 9 opportunity. If you think of it, you let me 10 know.</p> <p>11 Mr. Gregory, can you take a 12 look at Exhibit 46, it's your "An Economic 13 Perspective By: Gene Gregory"?</p> <p>14 A. I do remember that. 46. Okay. 15 Q. Do you have it in front of you? 16 A. I do. 17 Q. Can you turn to page 2? 18 A. Yes. 19 Q. At the bottom? 20 A. Uh-huh. 21 Q. Do you see the sentence that 22 says, "Now let's consider the reasons that 23 may have caused these egg price improvements"?</p> <p>24 Do you see that? 25 A. Yes.</p>
<p style="text-align: center;">867</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Feather cover of the birds was so much 3 better and egg farmers that once 4 resisted these kind of changes were 5 patting them on the back and just 6 tickled to death at what they had 7 done.</p> <p>8 BY MS. LEVINE: 9 Q. Mr. Gregory, can you look at 10 the document that was marked as Gregory-23? 11 A. 23. Going the wrong direction. 12 21, 2. 23. 13 Q. Could you turn to page 2 of 14 Exhibit 23? 15 A. Yes. 16 Q. Do you see under the part where 17 it says "C. Comments"?</p> <p>18 A. Yes. 19 Q. Mr. Olson questioned you about 20 this document. Do you remember? 21 A. I do. 22 Q. You wanted to explain something 23 to him. What did you want to explain, if you 24 remember? 25 A. I'm sorry, I don't recall right</p>	<p style="text-align: center;">869</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. What, if anything, did you do 3 when you wrote this to determine the -- to 4 determine that the reasons actually caused 5 the price improvements noted?</p> <p>6 MR. OLSON: Objection to form. 7 THE WITNESS: So I need to turn 8 the page and --</p> <p>9 BY MS. LEVINE: 10 Q. Yeah. 11 A. Okay. 12 Q. I'm sorry. The reason -- 13 A. Yeah. 14 Q. And really the question is, 15 what did you do, if anything, to make these 16 determinations?</p> <p>17 MR. OLSON: Same objection. 18 THE WITNESS: Well, I was aware 19 that the USDA had depopulated 3 20 million birds in Southern California 21 because of Egzota Newcastle disease 22 problem. I knew that U.S. Egg 23 Marketers had made some exports during 24 those times. I knew that egg breaking 25 plants at that point in time were</p>

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<p style="text-align: center;">870</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 reducing their inventory of products 3 and they were buy -- what I mean by 4 that was they were buying product and 5 because they were reducing their 6 inventory or they would be buying. 7 And at that point in time, I can't 8 remember whether that was along about 9 the Atkins Diet time, we saw an 10 increase in per capita consumption of 11 eggs. And then as we were beginning 12 to phase in the Animal Welfare 13 Guidelines, I anticipated that that 14 was having a contribution. So it was 15 just gathering information from 16 different sources.</p> <p>17 BY MS. LEVINE: 18 Q. Could other factors have been 19 responsible for these price improvements? 20 A. Absolutely. There always are. 21 MR. OLSON: Objection to form. 22 BY MS. LEVINE: 23 Q. Did you do anything to 24 determine if other factors were responsible? 25 A. I did not.</p>	<p style="text-align: center;">872</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 a period of time passed for the farmer to 3 have a need for or ability to build new 4 housing. 5 Q. And when in your guidelines 6 there was a time when the farmer would have a 7 need for new housing. Is that correct? 8 MR. OLSON: Objection to form. 9 THE WITNESS: Absolutely. 10 Eventually he's got to build new 11 housing. 12 BY MS. LEVINE: 13 Q. And he did, in fact, build new 14 housing? 15 MR. OLSON: Objection to form. 16 THE WITNESS: He invested in the 17 industry. I would not know the 18 millions of dollars that has been 19 invested in new housing. 20 BY MS. LEVINE: 21 Q. And when new housing was done, 22 then the supply goes up. Right? 23 A. In fact, it went way beyond 24 what the need was. 25 Q. And then the price went down.</p>
<p style="text-align: center;">871</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. And in terms of the -- 3 implementing the welfare guidelines, can you 4 explain what you meant by that at that period 5 of time? 6 A. What was the dating on this? I 7 forget. This is 2003. 8 MR. OLSON: Objection to form. 9 BY MS. LEVINE: 10 Q. Go ahead. 11 A. We have now -- I don't know 12 what the date of this -- it's October 2003, 13 yeah. We had at this point in time lost the 14 program with chicks hatched in April of 2002 15 which meant that those chicks would be going 16 to the layer house in the fall of 2002. So 17 that was our first phase-in period. We were 18 now at 56 inches and we had gone from what we 19 talked about this morning as mostly 20 53.3 inches at that time. So there had 21 been -- in this short amount of time, there 22 had been birds, the number of birds per cage, 23 at least on some of the cages at that point 24 in time had birds -- a bird or so had been 25 taken out of some cage and it not been enough</p>	<p style="text-align: center;">873</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Is that right? 3 A. Absolutely. 4 Q. And is that one of the reasons 5 that caused, I think you said one of the 6 worst times in egg history? 7 A. Yes. 8 Q. Mr. Gregory, can you also look 9 at page 1 of this document? 10 A. Yes. 11 Q. Look at the bottom couple of 12 paragraphs about Dick Chilson. Do you see 13 that, sir? 14 A. Yes. 15 Q. Do you see in that paragraph 16 that said, "So did the industry lose money 17 during this four-...year period?" 18 Do you see that paragraph? 19 A. Yes. Yes. 20 Q. The document says, "Dick 21 Chilson provided figures showing that the 22 average return for all his clients was about 23 ½ cent per dozen profit per year." 24 Do you see that? 25 A. Yes.</p>

<p style="text-align: center;">874</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Do you see the next sentence, 3 he said that "...the Top Third of his clients 4 were about 3 - 4 cents above this average and 5 his Bottom Third averaged about 3 - 4 cents 6 below the average." 7 A. Yes. 8 Q. Do you see that? 9 A. Yes. 10 Q. So sometimes an average, 11 sometimes there are profits and sometimes 12 there are losses. Correct? 13 MR. OLSON: Objection to form. 14 THE WITNESS: Oh, yes. 15 Absolutely. 16 BY MS. LEVINE: 17 Q. That's what an average is. 18 Right? 19 MR. OLSON: Objection to form. 20 THE WITNESS: What this 21 particular thing is talking about is 22 that Dick Chilson had a service where 23 he measured all kinds of parameters 24 with his clients that he had, and then 25 he would publish a report, not</p>	<p style="text-align: center;">876</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. There you're talking about 4 averages, too, which is what you just said, 5 some up, some down. Right? 6 MR. OLSON: Objection to form. 7 THE WITNESS: Yes. 8 BY MS. LEVINE: 9 Q. So some prices is up for some 10 purchasers and some went down for other 11 purchaser. Is that right? 12 MR. OLSON: Objection to form. 13 THE WITNESS: What this is, is 14 Urner Barry quote from those different 15 categories of eggs. And, yes, some 16 went up, some went down. 17 BY MS. LEVINE: 18 Q. And I think at the top of the 19 document there is some discussion about cost 20 plus contracts. Do you see that? 21 A. Yes. 22 Q. And when you were talking about 23 Urner Barry just when you talked about the 24 shell eggs, the breaking stock, the 25 unpasteurized, you're just talking about</p>
<p style="text-align: center;">875</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 identify them by name, but he would 3 publish a report of their performance. 4 What we're trying to say here is that 5 not everybody is the same. There are 6 some farms and some companies that are 7 more efficient or more profitable than 8 others. 9 BY MS. LEVINE: 10 Q. Some profit's up, some profit's 11 down. Right? 12 MR. OLSON: Objection to form. 13 THE WITNESS: Right. 14 BY MS. LEVINE: 15 Q. If you turn to page 2, please. 16 I think you reviewed this document with Mr. 17 Olson a little bit and you -- and in the 18 middle it says, "Let's review the extent of 19 the price turn around." 20 Do you see that? 21 A. Yes. 22 Q. You talk about Shell Eggs, 23 Breaking Stock, Unpasteurized Whole, 24 Pasteurized Whole, Dried Whole... 25 Do you see that?</p>	<p style="text-align: center;">877</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Urner Barry effect, you're not talking about 3 cost plus -- sorry, you're not talking about 4 cost plus contracts? 5 A. No. No. This is -- 6 Q. You're not -- go ahead. 7 A. No, no. This does not have 8 anything to do with cost plus contracts 9 between egg supplier and his customer. 10 Q. Or, for that matter, any other 11 type of way that a producer would price his 12 own eggs? 13 A. In fact, at least in the shell 14 egg industry, I know uses the Urner Barry 15 benchmark quote as the point of negotiation 16 and retailers have driven the egg producers 17 down and down and down to a point instead of 18 selling eggs at the Urner Barry quote, it's 19 likely now that egg producers are having to 20 sell their eggs to a retailer for probably -- 21 I've been out of the business now for -- 22 really paying attention to this, really ever 23 since this lawsuit was filed, but at that 24 time it was probably they were selling back 25 of the Urner Barry quote by like 20 cents a</p>

<p style="text-align: center;">878</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 dozen. That comes about because the retailer 3 keeps putting pressure on the egg supplier to 4 sell them for less all the time because your 5 competitor will.</p> <p>6 Q. When you testified this morning 7 about the effect that retailers have on 8 prices, you don't know that across the board. 9 Right?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: Ask the question 12 again, I'm sorry.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. This morning when you were 15 asking -- you were testifying in answer to 16 some questions about the effect that 17 retailers had on prices, you don't know those 18 effects across the board. Right?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: No. No.</p> <p>21 BY MS. LEVINE:</p> <p>22 Q. You don't know every retailer 23 price?</p> <p>24 A. No, I have no idea.</p> <p>25 MR. OLSON: Same objection.</p>	<p style="text-align: center;">880</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 evidentiary point. He's just making his 3 record.</p> <p>4 A. It gets real irritable.</p> <p>5 Q. I understand.</p> <p>6 MR. OLSON: Tell you what, 7 should we have a standing objection to 8 leading questions? Then I can object 9 much less.</p> <p>10 MS. LEVINE: No, I think we have 11 to keep to object to the form.</p> <p>12 THE WITNESS: I'm just trying to 13 understand how this whole thing works.</p> <p>14 MR. OLSON: I just made an offer 15 that would have made it a little 16 simpler, but...</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. What phase-in period did UEP 19 initially want?</p> <p>20 A. We went to FMI discussing that 21 we would like to get their endorsement and we 22 would like to do this over a 12-year phase-in 23 period.</p> <p>24 Q. And what phase-in period did 25 the retailers want?</p>
<p style="text-align: center;">879</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 THE WITNESS: When I talk about 3 retailers, we're talking about what is 4 published by USDA.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. But you don't know anything in 7 particular about any particular retailer?</p> <p>8 A. I have no idea about any 9 contract between a supplier and a retailer.</p> <p>10 MR. OLSON: Same objection.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Or the effect?</p> <p>13 A. No.</p> <p>14 MR. OLSON: Same objection.</p> <p>15 THE WITNESS: I'm sitting here 16 and I'm wondering what -- I've never 17 been through so, but I don't know that 18 her questions are so offensive or 19 anything. I don't understand all the 20 objections.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Mr. Gregory, it's just -- it's 23 what lawyers do about a question. He thinks 24 some of my proper questions as -- the way 25 that I'm asking are improper from an</p>	<p style="text-align: center;">881</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. FMI, NCCR wanted to have it 3 done very quickly. They suggested we do it 4 over a three-year period.</p> <p>5 Q. What was ultimately 6 implemented?</p> <p>7 A. We reached a compromise 8 agreement and settled on six years.</p> <p>9 Q. Do you recall that on Tuesday 10 you discussed with Mr. Olson the Scientific 11 Advisory Committee's recommendation on space 12 allowance?</p> <p>13 A. Yes.</p> <p>14 Q. Let's take a look at those 15 recommendations. Can you take out again 16 Gregory-20, which is September -- dated 17 September 2000?</p> <p>18 A. That number is what again?</p> <p>19 Q. 20.</p> <p>20 A. 20. Okay.</p> <p>21 Q. At the same time I'm going to 22 mark Gregory-107, which is Bates stamped 23 UE0295925 through UE0295940.</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-107, United Egg</p>

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<p style="text-align: center;">882</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Producers Animal Husbandry Guidelines 3 for U.S. Egg Laying Flocks, Bates 4 UE0295925 - UE0295940, was marked for 5 identification.) 6 - - - 7 BY MS. LEVINE: 8 Q. I'm going to hand it to the 9 witness. This is Gregory-107. There's a 10 couple of documents that I'm going to have 11 you look at all at once so there's no 12 confusion. 13 A. Okay. 14 Q. Can you tell me what Gregory-20 15 are? 16 A. Those are the recommendations 17 that the Scientific Committee presented to 18 our Board of Directors in September of 2000. 19 Q. Are those the final 20 recommendations? 21 A. There has been modifications or 22 things that have come about since then based 23 upon research that occurred after that, but 24 at that time that was. 25 Q. Can you turn to page Bates</p>	<p style="text-align: center;">884</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Can you look now at what we 3 just marked as Gregory-107? 4 A. Okay. 5 Q. What is this document? 6 A. That is the first edition of 7 the Animal Husbandry Program. 8 Q. This is the one that you 9 referred to repeatedly when Mr. Olson showed 10 you a draft that was written in 2000. Right? 11 A. Yes. 12 Q. And that draft is Exhibit 21. 13 A. I don't have that. Do you want 14 me to find it? 15 Q. That's okay. Yeah, take out 16 Exhibit 20 -- I'm sorry, Exhibit 21. 17 A. 21. So which pile was I in 18 here? 19 MR. OLSON: While he finds that, 20 can we take a 30-second break so I can 21 do something? 22 MS. LEVINE: 30 seconds? 23 MR. OLSON: Use the restroom. 24 MS. LEVINE: We're all going to 25 stay here.</p>
<p style="text-align: center;">883</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 number UE0208693? 3 A. I have it, yes. 4 Q. Under "Housing Recommendations...., 5 do you see that? 6 A. Yes. 7 Q. Are these the Scientific 8 Advisory Committee's recommendation on 9 housing and space allowance? 10 A. Yes. 11 Q. Can you read to me the third 12 recommendation? 13 A. "Space allowance should be in 14 the range 67 to 86 square inches of usable 15 space per bird, depending on the type of cage 16 and the type of bird that is being housed. 17 For example, space allowance can be at the 18 low end of the range in shallow cages in 19 which small Leghorn strains are housed, but 20 should be at the higher end of the range in 21 deep cages housing larger strains like brown 22 hens. Useable space is space that is not 23 obstructed by cage equipment, and has a 24 ceiling height that is high enough for the 25 hens to stand comfortably upright."</p>	<p style="text-align: center;">885</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Okay. 3 VIDEOGRAPHER: The time is 4 approximately 1:20 p.m. We're off the 5 record. 6 - - - 7 (A recess was taken.) 8 - - - 9 VIDEOGRAPHER: The time is 10 approximately 1:25 p.m. This begins 11 tape five, volume three. We're back 12 on the record. 13 BY MS. LEVINE: 14 Q. Mr. Gregory, do you have 15 Exhibit 21? 16 A. I do have. 17 Q. And this is the document that 18 Mr. Olson had asked you questions about. 19 A. Okay. 20 Q. Is this a draft? 21 A. Yes. 22 Q. And is Exhibit 107 the final 23 guidelines? 24 MR. OLSON: Objection to form. 25 THE WITNESS: Excuse me. That</p>

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<p style="text-align: center;">886</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 would have been the guidelines that 3 were the final ones at that time that 4 started the program. 5 BY MS. LEVINE: 6 Q. Can you turn to page 4 of that 7 document, 107? 8 A. Yes. 9 Q. Look under "Recommendations." 10 A. Yes. 11 Q. Was the Scientific Advisory 12 Committee's recommendation that space 13 allowance should be in the range of 67 to 14 86 inches included in the 2002 UEP 15 guidelines? 16 A. In the 2002? That's what we're 17 looking at right now? 18 Q. Yes. 19 A. Yes. 20 Q. And is that included? 21 A. Yes. 22 Q. Where is that included, could 23 you just point that out to me? 24 A. It's point number 3 under the 25 "Recommendations."</p>	<p style="text-align: center;">888</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 the actual guidelines. 3 A. Yes. 4 Q. Look at page 4. 5 A. Yes. 6 Q. And was the Scientific Advisory 7 Committee's recommendation that birds be 8 allowed to stand comfortably adopted? 9 MR. OLSON: Objection to form. 10 THE WITNESS: It says that "All 11 hens should be able to stand 12 comfortably upright in their cage. 13 The slope of the cage floor should not 14 exceed 8 degrees." 15 BY MS. LEVINE: 16 Q. Thank you, Mr. Gregory. 17 A. Can I further explain what I 18 think is a positive thing here? 19 Q. Sure. 20 A. We talked a great deal about 21 road map. The thing I'm most proud of about 22 this is that the recommendations that the 23 Scientific Committee made and they recognized 24 that with existing equipment there were some 25 things that you could not do. You can't</p>
<p style="text-align: center;">887</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Thank you. Let's take another 3 look at recommendations by the Scientific 4 Advisory Committee on housing and space that 5 Mr. Olson asked you about. Look at Gregory-20. 6 A. Page 20? 7 Q. Look at the document 20 -- 8 A. No. The document 20. 9 Q. -- the September -- 10 A. Yes, I have it. 11 Q. -- 2000. You have that? 12 A. Uh-huh. 13 Q. And turn to UE0208693. 14 A. I have that. 15 Q. And, please, read the second 16 recommendation. 17 A. Hens should be able to stand 18 comply upright in their cage without having 19 their heads protruding into the cage above. 20 A cage height of 16 to 17 inches will 21 generally be acceptable for small Leghorn 22 strains, while larger strains will require 23 larger cages -- taller cages. The slope of 24 the cage floor should not exceed 8 degrees. 25 Q. Look at Exhibit 107 which are</p>	<p style="text-align: center;">889</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 change the size of the cage and so forth. 3 What it was, it said to the equipment 4 manufacturers in the egg industry, you need 5 to start building different kinds of cages, 6 and they did. Everything has been built in 7 the -- I think virtually everything has been 8 built since these guidelines came along has 9 provided taller cages, it is most of the 10 system that have been built are manure belt 11 system where there is no drop through, you 12 know, the air quality in the houses. It was 13 a road map for the equipment companies to 14 build a better cage system. And it's -- it 15 is amazing what the systems are today versus 16 what they were even in 2000. 17 My point of saying that is that 18 you -- it took time for this evolution. 19 Q. Recall that another one of the 20 Scientific Advisory Committee's 21 recommendations you covered with Mr. Olson 22 concerned fresh air and acceptable levels of 23 ammonia concentration? 24 A. Yes. Yes. 25 Q. What is the maximum ammonia</p>

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<p style="text-align: right;">890</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 concentration allowed today under the UEP 3 program?</p> <p>4 A. Let's see, I think it's -- I 5 think it's --</p> <p>6 Q. I can show you a document.</p> <p>7 A. I was going to say, can I get 8 it out of my briefcase?</p> <p>9 Q. Can you look at Gregory-106 10 that I gave you? It is the 2007-2008.</p> <p>11 A. What did I do with that?</p> <p>12 Q. I can give you my document.</p> <p>13 A. I need to read it to be sure.</p> <p>14 Q. On 106 --</p> <p>15 A. You want me to read about 16 temperature and air quality, the guidelines?</p> <p>17 Q. Can you look at --</p> <p>18 A. It says --</p> <p>19 Q. Can you look at UE0225077, and 20 what does it tell you about the ammonia 21 levels?</p> <p>22 A. The ammonia concentration to 23 which birds are exposed should ideally be 24 less than ten parts per million and should 25 rarely exceed 25 parts per million.</p>	<p style="text-align: right;">892</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 down on the side of the OSHA for humans and 3 the fact that we need to also be concerned 4 about the workers within the house. And so 5 that was one of their recommendations. We 6 didn't think we could get to that as yet, but 7 yet when we -- after presenting our 8 guidelines to and asking the endorsement from 9 the FMI and NCCR, this is one of the things 10 that they found was deviated and they urged 11 us to change that and ultimately, regardless 12 of what the effect on northern climates were, 13 we changed it to what the Scientific 14 Committee wanted.</p> <p>15 Q. Thank you, Mr. Gregory. 16 What is molting?</p> <p>17 A. Well, actually molting is a 18 natural process that birds go through. It's 19 a means of them in most cases shedding some 20 feather, reducing body fat, getting 21 themselves into a reproductive stage. Now, 22 in the nature, in the wild, that means 23 getting themselves in a reproductive stage so 24 that they can hatch new chicklings. In our 25 industry, molting will go -- hens will go</p>
<p style="text-align: right;">891</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Thank you, Mr. Gregory. 3 Recall that you wanted to 4 explain to Mr. Olson why the maximum ammonia 5 concentration allowed initially under the UEP 6 program was 50, but you did not have that 7 opportunity. Do you want to explain it to me 8 now?</p> <p>9 A. Yeah, there was a great debate 10 amongst our Producer Committee about this 11 issue. Because we had people in the northern 12 states that were fearful that in the winter 13 months when you have to button the house up 14 much tighter because of cold temperatures, 15 the ammonia level goes up in the house. They 16 were arguing that if you take these birds out 17 of their house, then the hens won't produce 18 enough body heat in order to keep the house 19 warm. They were arguing against this. And 20 there were people that were arguing against 21 this as well because they were referencing 22 OSHA standards. And OSHA standards were one 23 thing for like birds and they were different 24 for humans.</p> <p>25 The Scientific Committee came</p>	<p style="text-align: right;">893</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 into a molt naturally, but not all on the 3 same day or the same week or that kind of 4 thing. And it's a very disruptive thing. So 5 many years ago, sometime in the 1960s, at -- 6 what university, I don't know where that was, 7 I think it was somewhere in California, they 8 figured out that a way to synchronize a molt 9 so that all hens were being molted at the 10 same time.</p> <p>11 Now, the benefits of a molt, is 12 by the time you do this, a hen is now in its 13 older ages, it's not -- its rate of 14 production is not good. But more than that, 15 the problem is that as a hen ages, the shell 16 quality, they're depleting calcium from their 17 body to make an egg shell, and as they get 18 older, the shell depleting and the -- as the 19 egg size gets larger, the shell quality gets 20 thinner. You have more cracks, more checks, 21 that kind of thing. Well, consumers don't 22 want to buy what we call then B grade eggs, 23 so when you put a hen into molt, when she 24 comes back into production, she is more like 25 a young pullet now and she is now laying eggs</p>

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<p style="text-align: center;">894</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 that have a really nice shell on them. 3 That's what the consumer wants. 4 Q. When birds naturally molt, do 5 they stop eating for a period of time? 6 A. That's what I'm told. I'm not 7 an expert on that, but, yes, they do stop 8 eating. The purpose of that is to reduce 9 themselves or do some things in order to 10 rejuvenate that reproductive cycle. 11 Incidentally, maybe people in 12 here don't know, but you do not need roosters 13 with hens to produce eggs. Now, it's 14 surprising, but we've actually employed 15 people that work for us and they didn't know 16 that. But you do not need roosters to 17 produce eggs. A hen will naturally lay eggs. 18 The rooster is only necessary in order to 19 fertilize that egg. And if you want to 20 hatch -- hatch chicks, then you need roosters 21 with them. But otherwise you do not need 22 roosters. 23 Q. Do you recall that on Tuesday 24 you wanted to explain to Mr. Olson why the 25 original UEP guidelines didn't prescribe a</p>	<p style="text-align: center;">896</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 they do quite well during that period 3 of time. But anyway, that was the 4 only way known. But one of the 5 scientists that was working with us 6 said you also have to look at this as 7 a public issue. What if the public 8 was to learn that you're taking feed 9 away from animals, that would be an 10 unacceptable public issue. So we 11 said, okay, we've got to find out a 12 way to resolve this. So we 13 commissioned research on molting to 14 see if we could find a way to induce a 15 molt without taking feed away, and lo 16 and behold despite everybody saying it 17 couldn't be done, we did find it. And 18 believe me, it works and everybody 19 just loves it.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. Mr. Olson asked you about 22 feeder space.</p> <p>23 A. Yes.</p> <p>24 Q. Can you take a look at 25 Gregory-20, which are the September 2000</p>
<p style="text-align: center;">895</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 specific maximum period of time that feed 3 could be withdrawn to induce a molt? And you 4 did not have an opportunity to explain 5 yourself. Could you, please, explain now 6 what you wanted to tell Mr. Olson about that? 7 MR. OLSON: Objection to form. 8 THE WITNESS: Well, at that time 9 when the molt recommendations were 10 being made, the scientists said we 11 recognize the benefits and it's 12 scientifically justified to put hens 13 in molt. And the only known way to do 14 that is withdraw feed. And different 15 programs, different programs produced 16 better results. Surprisingly, hens 17 that went off of feed for more days 18 actually were -- produced better eggs 19 and longer eggs than those that were 20 put in a short molt, short few days 21 because in a short few days, they 22 didn't accomplish what's needed as a 23 molt. Now, it's appalling to me that 24 you have to take feed away from any 25 animal, but it's surprisingly that</p>	<p style="text-align: center;">897</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 recommendations?</p> <p>3 A. Yes.</p> <p>4 Q. Take a look at UE0208693.</p> <p>5 A. Yes.</p> <p>6 Q. What was the Scientific 7 Advisory Committee's recommendation on feeder 8 space?</p> <p>9 A. Four inches per bird.</p> <p>10 Q. Could you read that into the 11 record, please, sir?</p> <p>12 A. "A minimum feeder space of 4 13 inches per bird should be allocated such that 14 all birds can feed simultaneously."</p> <p>15 Q. And can you go to the 2002 16 guidelines, Exhibit 107?</p> <p>17 A. Yes.</p> <p>18 Q. You should have it right in 19 front of you. And can you look at the 20 housing and space allowance on page 4?</p> <p>21 A. Yes.</p> <p>22 Q. What was the recommendation 23 adopted on feeder space?</p> <p>24 A. "Feeder space should be 25 sufficient to allow all birds to eat at the</p>

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<p style="text-align: center;">898</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 same time."</p> <p>3 Q. Why wasn't four inches 4 specified?</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 THE WITNESS: It's a really good 7 question. Because you see in addition 8 to floor space in a cage, the feeder 9 space is running along in front of it. 10 So if you were to go to four inches of 11 feeder space per bird, that was 12 increasing the feeder space based on 13 what current we're doing. And just in 14 order to meet that guideline would 15 mean that you have to take more birds 16 out of the cages and depopulate more 17 birds, that would have meant that we 18 would have further reduced the flock 19 size. But what we argued with the 20 Scientific Committee about is that we, 21 with the existing equipment the way we 22 have it, we don't think that that's 23 possible without taking several 24 million more hens out of the market. 25 We said that as we phased this in, as</p>	<p style="text-align: center;">900</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 so through the period of time, then 3 the Scientific Committee changed their 4 recommendation to three inches, I 5 believe, and wrote it in particularly 6 for cage free birds which you would 7 think need more space than cage birds.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. So, Mr. Gregory, do the 10 guidelines incorporate the Scientific 11 Advisory Committee's recommendation that all 12 birds be able to eat at one time?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: That's what it 15 says, yes.</p> <p>16 BY MS. LEVINE:</p> <p>17 Q. That's what the guidelines say. 18 Right?</p> <p>19 A. Yes.</p> <p>20 Q. Can you take a look at 21 Gregory-5? Do you have that handy?</p> <p>22 A. Do I need to keep these out?</p> <p>23 Q. Yeah, keep those out. Just 24 look at Gregory-5. I'm going to hold this 25 for you.</p>
<p style="text-align: center;">899</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 you increase floor space per bird, 3 that correlates by the fact that 4 you're also at the same time 5 increasing the feeder space per bird. 6 We said by the time we phase this in, 7 that we will have accomplished that. 8 But in the meantime, the Scientific 9 Committee did more field research on 10 this because that recommendation came 11 out of university research. That was 12 not based on commercial operations. 13 So they looked at this in the 14 field. Than a guy named Dr. -- I 15 think his name is Paul Gardner, at 16 Purdue University, then did a feeder 17 space research project, and I think 18 it's called epidemiologic. I don't 19 understand what all it is, research 20 project, funded by the U.S. Poultry 21 and Egg Association. And what he 22 found in commercial -- in commercial 23 business that range, as I recall, 24 something like 2.7 to 3.3 space was 25 enough for a white Leghorn hen. And</p>	<p style="text-align: center;">901</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I've got it. 3 Q. On Gregory-5 on page 3, top of 4 page 3 which is UE0567057. 5 A. Yes. 6 Q. You said, or the document says, 7 "UEP has never rejected a recommendation by 8 the committee." What did you mean by that? 9 A. We accepted -- we accepted -- 10 the board accepted those recommendations and 11 endorsed them unanimously. We accepted them 12 with the understanding that there were some 13 things that we could not do immediately, and 14 accepted with the understanding that the 15 Producer Committee was working on this and 16 trying to figure out -- you see the 17 Scientific Committee never told us when and 18 how to do these things. They just said this 19 is what it should be. So the Producer 20 Committee then had to work on this. But the 21 board or the Producer Committee would never 22 ever -- never ever question the Scientific 23 Committee's recommendation. 24 Q. Mr. Gregory, can you look at 25 document 27 that was marked as 27. Which</p>

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<p style="text-align: center;">902</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 pile is that? 3 A. You think it's in this pile? 4 Q. This pile. 5 A. Okay, I got it here. 6 Q. On Tuesday, Mr. Olson asked you 7 about Joy Mench's statement on page 2, that 8 her opinion is that no hen should get less 9 than 72 inches of cage space. 10 A. Yes. 11 Q. Do you recall that you wanted 12 to address the remainder of this e-mail, but 13 Mr. Olson wouldn't let you at that time? 14 A. I think so. 15 Q. What else did you want to say? 16 A. Well, what this was is that 17 this 72 inches was based upon, you know, 18 white birds and brown birds, and it was just 19 birds in general. And, you know, 90, 20 95 percent of our egg laying hens in the 21 country are white birds. 22 Q. Just want to put one issue to 23 rest. What is beak trimming? 24 A. Okay. Good one. Well, 25 unfortunately the -- years ago the word was</p>	<p style="text-align: center;">904</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Committee came up with. Prior to this we had 3 people beak trimming at 14 weeks of age or 4 ten weeks of age or different ages, which 5 they proved to us that that was maybe not a 6 good practice, maybe it was inhumane, maybe 7 there was greater pain and so forth. And 8 based upon all the work that Dr. Patricia 9 Hester had done, the recommendation was to 10 try to breed birds that don't need to be beak 11 trimmed which we haven't been able to do yet. 12 But if you do need to beak trim, it should be 13 done at ten days or younger. As a result of 14 that, there's been lots of things happen 15 since then. And many of our chicks are now 16 beak treated, treatment done at day old at 17 the hatchery. 18 Q. Mr. Gregory, can you look, 19 again, at Gregory-106 which is the most 20 recent guidelines? 21 A. I have 107. 22 Q. It's 106. 23 A. I think you had that and you 24 handed it over to me. I think I couldn't 25 find 106. Is it here?</p>
<p style="text-align: center;">903</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 used and animal activists have used it, 3 de-beaking. And that implies to anyone not 4 understanding our industry as if you had cut 5 the beaks off of chicken. Well, that would 6 be obviously foolish. What it's talking 7 about is trimming, the bird -- birds have a 8 beak that on the tip of it is a real sharp 9 point. Quite honestly, it is a real sharp 10 point because that's a defensive mechanism 11 and they use it for fighting one another. So 12 what happens is that you trim that tip off so 13 that you have more of a blunt point rather 14 than a sharp point, and the purpose of it is, 15 is to avoid cannibalism. 16 Now, again, I tell you, you 17 know, you may -- a bird's beak is 18 proportionate to its body. It's not like a 19 fingernails, just growing all the time. You 20 don't have to keep doing that. You do it 21 only one time. 22 Q. At what time do you do trim off 23 that little end of the beak? 24 A. Well, that's another real 25 positive thing that I think our Scientific</p>	<p style="text-align: center;">905</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. That's okay. I'll give you my 3 copy of 106. Here's Exhibit 106 for you. 4 Can you turn to page 6? 5 A. Yes. 6 Q. And look at or review the 7 second paragraph beginning, "After having 8 reviewed the findings of the university 9 research projects for non-feed withdrawal 10 molt programs..." 11 Do you see that? 12 A. Yes. 13 Q. Could you just read that to 14 yourself? 15 Has the Scientific Advisory 16 Committee revised its recommendations on molt 17 after this research was done? 18 A. Yes, they did. 19 Q. And is it indicated there? 20 A. Yes. 21 Q. I'm going to mark the next 22 document. You can put that down, but don't 23 lose it. 24 A. I'll put it right here if you 25 don't mind.</p>

<p style="text-align: center;">906</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. I'm going to mark the next 3 document as 108. It's Bates stamp UE0176451. 4 - - - 5 (Exhibit Gregory-108, 10/4/04 6 Letter, Bates UE0176451, was marked 7 for identification.) 8 - - - 9 BY MS. LEVINE: 10 Q. Can you identify this document, 11 Mr. Gregory? 12 A. It's a letter being written by 13 Dr. Armstrong to Paul Bahen who was the 14 chairman of the Producer Committee for animal 15 welfare at that time. 16 Q. Why did the Scientific Advisory 17 Committee oppose backfilling? 18 A. Well, I think rather than me 19 paraphrasing, I probably should read what Dr. 20 Armstrong said. 21 Q. Take your time. 22 A. What -- he is -- you're waiting 23 for my answer? 24 Q. Yeah. 25 A. What he's doing is he is</p>	<p style="text-align: center;">908</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 THE WITNESS: They, like we, had 3 no idea that this was going to be 4 something that was going to occur. It 5 was unanticipated when it was learned 6 about that, they felt it was an 7 embarrassment upon what their intent 8 and welfare guidelines were. 9 BY MS. LEVINE: 10 Q. Thank you, Mr. Gregory. You 11 can put that document down. 12 I'm going to move to another 13 part of the program. Why are some guidelines 14 assigned more points than others in the 15 audit; for example, the overcrowding of 16 cages? 17 A. You know, the current audit is 18 broken down, don't hold me to it exactly, but 19 it's broken down into like 50 points for 20 space or 45 -- I can't remember, 50 points, I 21 use it 50 points for space, and 30 points for 22 beak trimming, and 30 points for something 23 else. So when you're talking about space, 24 space is really only one thing. You know, 25 you -- where when you're talking about beak</p>
<p style="text-align: center;">907</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 writing to the chairman, the Producer's 3 Animal Welfare Committee providing reasons 4 why it is -- it certainly is not something 5 that the Scientific Committee anticipates, 6 nor do they support. I'm speaking about 7 backfilling. He identifies that the science 8 talks about mixing birds from different age 9 flocks, it causes -- it makes them more 10 susceptible to disease. The vaccination 11 schedules, the social companion, and a 12 variety of reasons why it is not a good 13 animal welfare practice to mix birds of 14 different ages in the cages. 15 He's also going forward to say 16 that he doesn't believe that FMI and NCCR had 17 any knowledge that our industry was 18 backfilling and would not support that. And 19 so he urged us to make this correction as 20 quickly as possible. 21 Q. And is that why backfilling 22 was -- the issue and the prohibition of 23 backfilling was not discussed originally by 24 this Scientific Advisory Committee? 25 MR. OLSON: Objection to form.</p>	<p style="text-align: center;">909</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 trimming and you got 30 points there, there 3 are like a series of six questions that are 4 each worth five points because they all fit 5 into that. It's the same way with other 6 segments. So it's not -- it's just not one 7 box you're talking about. It involves, you 8 know, feed, you know, it involves lighting, 9 it involves, you know, a follow on beak 10 trimming with certain medications and so 11 forth. So it was necessary to identify all 12 of these things separately and yet the blocks 13 are pretty similar, but it also -- you have 14 to understand as the Scientific Committee 15 would say to you, that if you compromise 16 space, you have created a compromise on 17 everything that you're doing. 18 Q. Was the criticism by the animal 19 activists against the egg industry most 20 focused on the cage issue? 21 MR. OLSON: Objection to form. 22 THE WITNESS: Yeah. I mean, 23 they're activist is to eliminate 24 cages, more so their movement is to 25 eliminate animal agriculture, but</p>

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<p style="text-align: center;">910</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 their focus was up on cages and their 3 attack upon us was that we keep these 4 chickens in barren cages, that kind of 5 thing, or battery cages I guess that's 6 what the word is.</p> <p>7 BY MS. LEVINE: 8 Q. That was one of the reasons for 9 the points being assigned to the cage issue?</p> <p>10 MR. OLSON: Objection to form. 11 THE WITNESS: Yes. Yes. It -- 12 we want -- and you have to understand 13 that when the meetings with FMI and 14 NCCR, I mean there's -- that was a 15 critical important thing to them, to 16 make sure you give the birds enough 17 space type thing.</p> <p>18 BY MS. LEVINE: 19 Q. Take a look at Exhibit 48, 20 Mr. Gregory. 21 A. Would it be in this pile now? 22 Q. It's your most favorite 23 document, it's Mr. Mueller's letter. 24 A. Okay. 25 Q. Okay. I'm just going to ask</p>	<p style="text-align: center;">912</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 trying every means they possibly could 3 to throw up roadblocks against the 4 development of this program.</p> <p>5 BY MS. LEVINE: 6 Q. What was his concern that you 7 just described? What was their business 8 objective?</p> <p>9 MR. OLSON: Objection to form. 10 BY MS. LEVINE: 11 Q. If you know. 12 A. No, I don't know what it was. 13 Q. Why did they at this time not 14 like the 100 percent rule? Do you know if 15 they did not like the 100 percent rule? 16 A. You know, it's interesting 17 about Sparboe, Garth Sparboe, the son of the 18 owner, president, Garth Sparboe was on the 19 Producer Committee for Animal Welfare, and 20 was a great contributor, and, you know, did 21 things. He was one of the people that went 22 with us to FMI and NCCR. But every time he'd 23 go back home and he'd tell his dad about 24 what's going on, he'd get his butt chewed out 25 from his dad because of what was going on.</p>
<p style="text-align: center;">911</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 you a couple of questions, okay, Mr. Gregory? 3 A. Okay. 4 Q. Do you agree with Mr. Mueller's 5 statement that the certified program had a 6 hidden agenda? 7 A. In fact, that's what was so 8 irritating to me and caused my outburst a day 9 or two ago because that was an insult upon 10 what was going on. So I expressed some 11 things about Mr. Mueller because of that 12 statement that maybe I should not have done 13 so. 14 Q. I take it that you didn't agree 15 with Mr. Mueller's characterization? 16 A. I don't agree with most of the 17 things of Mr. Mueller. 18 Q. In fact, do you think that Mr. 19 Mueller and the Sparboe Company were really 20 concerned with a hidden agenda? 21 MR. OLSON: Objection to form. 22 THE WITNESS: Well, I don't 23 know, my -- my suspicion is that this 24 did not fit into their marketing plans 25 at that time, at least, and they were</p>	<p style="text-align: center;">913</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 So I just think they felt the 3 egg industry did not need to worry about 4 animal welfare probably. I don't know what 5 all their motives were. They were constantly 6 trying to cause UEP problems. 7 Q. Is that one of the reasons why 8 you were not concerned with Mueller's letter? 9 MR. OLSON: Objection to form. 10 THE WITNESS: First of all, I 11 think Mueller makes a number of, as 12 such, statements in it that history 13 proves was not -- did not come true. 14 And he is making statements without 15 being a participant in trying to 16 resolve a public issue. He is sitting 17 by and he's objecting to it and he's 18 finding every roadblock that he can to 19 stop UEP in most everything we do. 20 He's as such laying out and telling us 21 that he's going to sue, they're going 22 to sue us. 23 BY MS. LEVINE: 24 Q. And were those reasons for 25 Sparboe's own economic reasons?</p>

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<p style="text-align: center;">914</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Objection to form. 3 THE WITNESS: I suspect it was, 4 yes. 5 BY MS. LEVINE: 6 Q. Is that what you thought? 7 MR. OLSON: Objection to form. 8 THE WITNESS: I would assume so, 9 yes. 10 BY MS. LEVINE: 11 Q. What is the purpose of the 100 12 percent rule, Mr. Gregory? 13 A. The Scientific Committee, when 14 they made their recommendations, they were 15 making recommendations to improve the welfare 16 of animals. They were not making 17 recommendations to improve the welfare of 18 20 percent of the birds or 40 percent of the 19 birds or 60 percent of the birds. It was 20 about this is what we recommend for all 21 birds. And so if UEP wanted to develop a 22 certification program, it needed to be a 23 credible program. And if you wanted to 24 use -- you could take our guidelines and you 25 could do whatever you want to, you could use</p>	<p style="text-align: center;">916</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 now and have been, I don't know, for, I don't 3 know, maybe it's a couple years now, I'm not 4 sure. 5 Q. Why did they change their 6 position on the 100 percent rule? 7 MR. OLSON: Objection to form. 8 THE WITNESS: I don't know all 9 of it, but the series of events was 10 that, you know, I hate to -- these 11 kind of things have come up. There 12 was undercover investigation done by 13 an animal activist that somehow or 14 another got into Sparboe farm, did a 15 video, obviously like all of them, 16 it's not a fair representation of the 17 company. But that video was turned 18 over to Brian Ross, and I believe he's 19 with ABC News. Anyway ABC or Brian 20 Ross did this big evening news show 21 about the Sparboe Company and about 22 their animal welfare programs or food 23 safety programs, and I don't remember 24 all of it, what was on it anyway, it 25 just -- the company itself I think</p>
<p style="text-align: center;">915</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 what you want to, but if you wanted to use 3 our certification program and use our logo 4 and market your eggs just simply saying 5 they're UEP certified, then there were 6 certain practices that you were going to have 7 to follow. And we could not go to our FMI, 8 NCCR, any customer and say to them, hey, by 9 the way, we've established Animal Welfare 10 Guidelines for 20 percent of the birds. I 11 mean, that would just have been ridiculous. 12 We would have had no respect whatsoever. 13 So the only way to do that, and 14 the only way to avoid eggs coming out of a 15 complex of several houses on the egg belts, 16 going in the house and not being mixed up and 17 all this and that was to say, okay, if you 18 want to be on our program, it's got to be 100 19 percent because we're going to be about 20 improving the welfare of 100 percent of the 21 birds, not just a few birds. 22 Q. Was there a time when Sparboe 23 changed its position on the 100 percent rule? 24 A. Yes, they -- in fact, they are 25 a good member of the UEP certified program</p>	<p style="text-align: center;">917</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 poorly represented themselves in that 3 response to that, and they quickly 4 lost customers. And Beth now by this 5 time is the president of the company, 6 and her husband Bob made a phone call 7 to me and said I would like to meet 8 with you, we need to apologize for 9 everything, all the things we've said 10 bad about UEP, and we've been wrong 11 all along about this, we need your 12 help. I explained that based on all 13 the things you've done to us, why 14 would I want to help you. 15 We had a conversation on the 16 phone and I said, you know what, Bob, 17 I like you, and it's my duty to help 18 companies that are in trouble. So I 19 will meet with you if my attorney 20 permits me to do so. I said, where do 21 you want to meet? He said, I'll fly 22 today down to Atlanta to do it. 23 So I made a call to my attorney 24 and said, hey -- 25 BY MS. LEVINE:</p>

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<p style="text-align: center;">918</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Don't divulge any communications 3 with attorneys. You can just tell us about 4 Sparboe and you. 5 A. As a result, Bob Snell did fly 6 to the airport in Atlanta. We met with him 7 there. He shared what their problems were, 8 asked for my help and I agreed to do 9 everything I possibly could to help them. 10 I then, because of all the 11 things that they had done to us, I had a 12 conference call, as I recall, with our 13 Executive Committee and said this is what the 14 situation is. Our Executive Committee, many 15 of them were saying we don't give a damn, 16 just, you know, let him -- it's not our 17 problem, it's their problem. And I convinced 18 the Executive Committee that it was my moral 19 duty, I felt like, that if someone was in 20 trouble in our industry, it put a bad light 21 upon the entire industry. And as president 22 of UEP, I felt compelled to go do what I 23 could to help these people. 24 Q. And is the example of Sparboe 25 the exact reason for the 100 percent rule?</p>	<p style="text-align: center;">920</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 they're very pleased to be a UEP 3 certified company and I think they 4 will find that that 100 percent rule 5 serves them well. 6 BY MS. LEVINE: 7 Q. Let's turn to another subject. 8 Mr. Gregory, was there ever any 9 agreement among certified companies not to 10 purchase non-certified eggs? 11 MR. OLSON: Objection to form. 12 THE WITNESS: Agreement amongst 13 companies? 14 BY MS. LEVINE: 15 Q. Certified companies not to 16 purchase non-certified eggs? 17 MR. OLSON: Same objection. 18 THE WITNESS: There was no 19 agreement amongst producers that I 20 ever knew of. I think there's 21 individual companies that made that 22 decision, but I don't think there was 23 ever any agreement. I'm sure there 24 wasn't agreement. 25 BY MS. LEVINE:</p>
<p style="text-align: center;">919</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Objection to form. 3 THE WITNESS: That, I don't 4 know. But to conclude it, I did then 5 fly to Minneapolis and met with Snell 6 and others and laid out how we could 7 do this, what we had to do, what they 8 had to do. As a result of it, they 9 made a number of changes. And I hope 10 that that's helped them retain their 11 business and so forth. So... 12 BY MS. LEVINE: 13 Q. Are they now part of the 14 certified program? 15 A. Yes. Yes. 16 Q. And are 100 percent of their 17 facilities, their houses under the program? 18 A. Absolutely. 19 Q. Do you think that Sparboe 20 considers the 100 percent rule now an 21 antitrust violation? 22 MR. OLSON: Objection to form. 23 THE WITNESS: I don't know what 24 they think. I have not had a 25 conversation about that. I think that</p>	<p style="text-align: center;">921</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. I'm going to mark the next 3 document as Gregory-109, which is Bates 4 stamped UE0210295 through UE0210298. 5 A. Yes. 6 - - - 7 (Exhibit Gregory-109, 8 UEP-Producer Committee For Animal 9 Welfare January 24, 2005 Atlanta, GA 10 Minutes, Bates UE0210295 - UE0210298, 11 was marked for identification.) 12 - - - 13 BY MS. LEVINE: 14 Q. Can you identify this document? 15 A. It is a -- the minutes of a 16 "UEP-Producer Committee For Animal Welfare." 17 Q. What is the date? 18 A. The date, January 24, 2005. 19 That just happened to be the birthday of two 20 of us in the room. 21 Q. Can you go to page 2? 22 A. Yes. 23 Q. About the middle of the page it 24 says, "Who May Market Animal Care Certified 25 Eggs?"</p>

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<p style="text-align: center;">922</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Do you see that? 3 A. Yes. Do you want me to read 4 it? 5 Q. Do you see where you presented 6 Mr. Isaacson's legal opinion? Do you see 7 that? 8 A. Yes. 9 Q. Can you read what is in quotes 10 there? 11 A. "In order to protect the 12 integrity of...," this in those days what's 13 still called Animal Care Certified. "In 14 order to protect the integrity of the ACC 15 program and logo and in view of the 16 difficulty in preventing the commingling of 17 certified eggs with non-certified eggs and to 18 treat all egg producers equally, it is hereby 19 moved: - That no new licenses to market 20 Animal Care Certified eggs will be issued or 21 renewed to producers who are not ACC 22 certified." 23 Q. Why was that motion made? 24 MR. OLSON: Objection to form. 25 THE WITNESS: Well, you know,</p>	<p style="text-align: center;">924</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 enough that it needed to change the 3 program so that this did not continue 4 to occur. 5 BY MS. LEVINE: 6 Q. And that was the situation that 7 you described to Ms. Cain-Mannix this morning 8 as violating the program and misrepresenting 9 the product. Is that right? 10 A. That's right. 11 Q. And going back to the document 12 in front of you, that motion that you read in 13 was made? 14 A. Was it made you said? 15 Q. Yes. 16 A. It says that "It was moved by 17 Fortin and seconded by Bynum to approve the 18 preamble and motion recommended by Isaacson." 19 Q. Did that motion pass? 20 A. It carried with two no votes. 21 Q. Is Irving Isaacson's language 22 here accurate that the motion was to protect 23 the integrity of the program? 24 MR. OLSON: Objection to form. 25 THE WITNESS: That is his direct</p>
<p style="text-align: center;">923</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I'm not sure the timing of this, but 3 we had a situation in the Northeast 4 with a producer that we felt 5 misrepresented what he was doing. He 6 was authorized to buy eggs from a 7 certified company and sell those eggs 8 as Animal Care Certified, only those 9 eggs that he bought from a certified 10 company. There were a number of 11 competitors in that area that were in 12 stores that this company -- now you 13 want me to -- I'll name the name, 14 Kreider Farms was marketing eggs. And 15 they provided the USDA number, every 16 plant has a USDA number, and they 17 provided pictures and USDA numbers, 18 and et cetera, that demonstrated to us 19 that, in fact, Kreider was putting 20 his -- putting our ACC logo on eggs 21 that he was producing himself which 22 were not certified. They provided us 23 with pictures, as I recall, at the 24 time and numbers and all that kind of 25 stuff. We felt that it was legitimate</p>	<p style="text-align: center;">925</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 quote. 3 BY MS. LEVINE: 4 Q. And do you agree? 5 A. Yes. 6 Q. Does this refresh your 7 recollection as to what certain producers 8 were concerned about at the producer meeting 9 about 11 months later? 10 A. Well, I don't remember the 11 time, but they were concerned that allowing a 12 producer to buy certified eggs from somebody 13 else when he's already in production himself, 14 that we could jeopardize the credibility and 15 producers could be, in fact, misusing that 16 carton on their own eggs, so we needed to 17 find a way to stop that situation. 18 Q. Would you take a look at 19 Exhibit 70 that was discussed this morning. 20 A. 70. Okay. 21 Q. And what you just testified to 22 in these last couple of questions about 23 Kreider and about the motion and what you 24 just said, is that what was going on and what 25 was being expressed in Exhibit 70?</p>

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<p style="text-align: center;">926</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Objection to form. 3 THE WITNESS: You know, I 4 can't -- this is, again, I apologize, 5 this is seven and a half years ago or 6 so forth, and I don't recall exactly 7 what it is, but we're talking about 8 some of these people have the concern 9 about the discontinuation of that 10 non-certified marketing agreement, and 11 so as well as other things we go to 12 Minneapolis to listen to their 13 concerns and complaints.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. Thank you, Mr. Gregory. 16 A. Listen, I know -- I don't know 17 how this game is played, but I'm walking out 18 of here at 3:00 because I need to catch a 19 plane. 20 Q. Take a look at Gregory-64. 21 A. I have it. Yes. 22 Q. Pull that out for just a 23 minute. 24 A. Yes. 25 Q. On Wednesday Mr. Olson asked</p>	<p style="text-align: center;">928</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 know this is going to be a problem. 3 So I think that's what he is talking 4 about.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. Thank you, Mr. Gregory. 7 In regard to USEM and the 8 exports, who makes decisions about whether 9 USEM will take a particular export?</p> <p>10 A. Initially it is the Export 11 Executive Committee. And if they approve it, 12 then it's forwarded on to the entire 13 membership and ultimately the entire 14 membership has to pass it by a majority of 15 the members.</p> <p>16 Q. This morning you told -- Ms. 17 Cain-Mannix showed you a United Voices, I 18 think it was in 2009 after this lawsuit had 19 been taken. It's 91 if you want to take a 20 look at it, Exhibit 91.</p> <p>21 A. I remember it.</p> <p>22 Q. And at that time for the Animal 23 Welfare Marketing Committees, you said they 24 will be closed to UEP members only?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">927</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 you about this document. What did Mr. Dean 3 mean when he said that backfilling would 4 cause problems in the future with flock 5 identity?</p> <p>6 MR. OLSON: I'm sorry, I might 7 have the wrong one. Could you show me 8 what 64 looks like? Okay. I 9 apologize. And I'll object to the 10 form.</p> <p>11 THE WITNESS: So I can't -- 12 because he doesn't identify it here, I 13 can't be certain what he's talking 14 about. As I tried to explain, we have 15 two issues that's coming down the pike 16 on us. One is we have a USDA animal 17 ID system that is going to create real 18 problems for us because we argue with 19 USDA to have that ID system for egg 20 laying hens as a flock rather than an 21 individual bird.</p> <p>22 We also have been working with 23 USDA -- with FDA on an egg safety rule 24 for quite a long time. And we know, 25 because we've working with them, we</p>	<p style="text-align: center;">929</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. And you said it was because of 3 the lawsuit?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have a concern that 6 people from UEA were talking to the 7 plaintiffs or others about the lawsuit?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: There was a number 10 of things. The date on that is what?</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. January 20, 2009.</p> <p>13 A. When we saw the Complaint and I 14 read the Complaint, I was how in the world 15 did plaintiff attorneys get all of this 16 stuff. Where did they get all this from. 17 And the idea -- thought was that somebody has 18 left our meetings and is turning information 19 over to we believe the Humane Society of the 20 United States or animal activists. And so we 21 decided we had to be more protective of what 22 might be leaving these meetings and so forth. 23 We also decided that we need to say right up 24 front that this is how we're going to -- 25 before we had had executive sessions, but</p>

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<p style="text-align: right;">930</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 we -- everybody was in the room and we would 3 say now we're going to go into exec session 4 and now all of a sudden we had to take a 10, 5 15-minute break for everybody else to get out 6 of the room. So this time we're saying to 7 them up front this is the way we're going to 8 conduct meetings.</p> <p>9 Q. Let's focus you on another 10 subject, Mr. Gregory. Whose interest does 11 UEP represent?</p> <p>12 A. Egg farmers.</p> <p>13 Q. And whose interest does USEM 14 represent?</p> <p>15 A. Egg farmers.</p> <p>16 Q. Is any UEP member given more 17 than one vote based on the amount of stock or 18 membership capital owned?</p> <p>19 A. No.</p> <p>20 Q. Is any USEM member given more 21 than one vote based on the amount of stock or 22 membership capital owned?</p> <p>23 MR. OLSON: Counsel, I'm going 24 to object to this line of questioning 25 as outside the scope of the direct</p>	<p style="text-align: right;">932</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 outside the scope.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Does UEP pay dividends?</p> <p>6 A. No.</p> <p>7 MR. OLSON: I object to this as 8 outside the scope.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. I want to talk to you a little 11 bit about marketing aspects. Does UEP help 12 members buy and sell eggs?</p> <p>13 A. We have had a service of 14 that -- well, our regionals had provided that 15 service until the consolidation and then we 16 continued doing that. However, since the 17 lawsuit has filed, our business has declined 18 considerably.</p> <p>19 Q. Does UEP have an egg trading 20 program?</p> <p>21 A. Yes.</p> <p>22 Q. That helped market eggs.</p> <p>23 Correct?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: That helps</p>
<p style="text-align: right;">931</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 examination.</p> <p>3 THE WITNESS: No.</p> <p>4 MS. LEVINE: You started the 5 deposition asking him about 6 Capper-Volstead, so I think it's right 7 in. Continue with the --</p> <p>8 MR. OLSON: I started the 9 deposition asking him about 10 Capper-Volstead?</p> <p>11 THE WITNESS: No. No.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Does UEP pay dividends?</p> <p>14 A. No.</p> <p>15 MR. OLSON: Can I just have a 16 stipulation to that objection for this 17 line of questioning?</p> <p>18 MS. LEVINE: Let's -- we can 19 always deal with the transcript after. 20 Mr. Gregory has limited time --</p> <p>21 MR. OLSON: So I'll object after 22 every question then.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. Does USEM pay dividends?</p> <p>25 MR. OLSON: I object to this as</p>	<p style="text-align: right;">933</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 producers with surplus eggs find a 3 producer that is in need of eggs.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Does UEP help members set 6 standards?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: Well, we think 9 that we cooperate on setting standards 10 for food safety and on animal welfare 11 if that's what you're referring to, 12 yes.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. And can you explain the food 15 safety programs at UEP?</p> <p>16 A. It's kind of complicated, but 17 it's a program that to address a problem of 18 called salmonella enteritidis, SE, and it is 19 -- it requires certain sanitation practices, 20 it requires certain inspection services. I 21 mean, the whole -- the program is quite 22 extensive and UEP's program is in many 23 respects hitting most all the highlights of 24 the FDA egg safety rule as well.</p> <p>25 MR. OLSON: Counsel, just</p>

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<p style="text-align: center;">934</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 briefly -- 3 MS. LEVINE: You can do a 4 continuing objection, but please don't 5 interrupt my question. 6 MR. OLSON: This is not an 7 objection. I just want to note we're 8 at 40 minutes until 3:00. As you know 9 we've reserved 40 minutes and the 10 witness has said he's leaving at the 11 stroke of 3:00, so if there's an issue 12 we should discuss about that, perhaps 13 we should discuss it now. 14 MS. LEVINE: Mr. Gregory, since 15 you have the 6:00 flight and we're in 16 the middle, you will get there in 17 plenty of time if you leave at about 18 3:15. Would that be okay, so we 19 can -- 20 THE WITNESS: That's fine, but 21 twice I've been up here and because of 22 that bridge construction out there, 23 it's not easy. 24 MS. ANDERSON: Some of the 25 defendants also have questions.</p>	<p style="text-align: center;">936</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 could be members of UEP. Right? 3 A. By the fact that they own 4 birds, yes. 5 Q. What are starter pullets? 6 A. That is a name that we use for 7 pullets that are growing in the growing 8 houses from the day that you put them in the 9 grower house at day one until they reach a 10 mature age that they're ready to start laying 11 hens. They're called -- they're pullets and 12 we call them starter pullets. 13 Q. Owners of starter pullets or 14 people in the starter pullets business could 15 be members of UEP? 16 A. Yes. 17 MR. OLSON: Objection to form. 18 THE WITNESS: By the fact that 19 they own birds. 20 BY MS. LEVINE: 21 Q. Also cooperatives, egg 22 cooperatives could be members. Correct? 23 A. If they are in -- if they're an 24 agriculture cooperative with members that own 25 egg laying hens or one of these other things,</p>
<p style="text-align: center;">935</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: That's why I raise 3 it now just so we can address whatever 4 we need to do logically. 5 MS. LEVINE: I'm going to ask a 6 few more questions and then we'll see 7 what we can do. 8 BY MS. LEVINE: 9 Q. Does UEP help members with 10 financing? 11 A. No. 12 Q. In terms of insurance, does it 13 help -- does it have an insurance program? 14 A. We have an insurance program. 15 Q. Mr. Gregory, what is a breeder 16 flock? 17 MR. OLSON: Objection to form. 18 Outside the scope. 19 THE WITNESS: A breeder flock is 20 a flock that has laying hens and 21 roosters in it in which they are going 22 to mate hopefully and produce fertile 23 eggs. 24 BY MS. LEVINE: 25 Q. And producers of breeder flocks</p>	<p style="text-align: center;">937</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 yes. 3 Q. Also contract producers could 4 be members of UEP? 5 A. Yes. 6 Q. And you considered all of those 7 entities to be farmers. Is that correct? 8 MR. OLSON: Objection to form. 9 THE WITNESS: Yes. 10 BY MS. LEVINE: 11 Q. And you have board meetings, 12 Executive Committee meetings by phone at 13 times. Right? 14 A. Yes. 15 Q. And are those meetings closed? 16 MR. OLSON: Objection to form. 17 THE WITNESS: Yes. 18 BY MS. LEVINE: 19 Q. And you call special meetings 20 from time to time, isn't that so? 21 A. Yes. 22 Q. Are those meetings closed? 23 A. Yes, unless someone is invited 24 to make a presentation. 25 Q. And the economic summit that we</p>

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<p style="text-align: center;">938</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 spent time talking about in 2004, just UEP 3 producers was invited to that meeting, isn't 4 that so?</p> <p>5 MR. OLSON: Objection to form. 6 THE WITNESS: There were no -- 7 we invited Lou Raffle or Joanne Ivy, I 8 don't remember, from the American Egg 9 Board. We invited Ron Whaley from 10 Country Creek Farms. That may have 11 been the only exceptions. They were 12 there to make presentations.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. They were there just for 15 presentations. Correct?</p> <p>16 A. Yes.</p> <p>17 MR. OLSON: Objection to form. 18 MS. LEVINE: We're going to mark 19 the next document Gregory-110. It is 20 UE0176108. Handing it to the witness. 21 - - - 22 (Exhibit Gregory-110, Letter, 23 Bates UE0176108, was marked for 24 identification.) 25 - - -</p>	<p style="text-align: center;">940</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I'm just going to take a quick 3 look, and I think then I am finished. 4 A. And then I'll take that 5 30-second bathroom break that he needed a 6 little bit ago.</p> <p>7 MS. LEVINE: Mr. Gregory, I'm 8 finished with my questions. You can 9 take your 30-second bathroom break and 10 come on back.</p> <p>11 THE WITNESS: Thank you. 12 VIDEOGRAPHER: The time is 13 approximately 2:26 p.m. We're off the 14 record. 15 - - - 16 (A recess was taken.) 17 - - - 18 VIDEOGRAPHER: The time is 19 approximately 2:33 p.m. This begins 20 tape six, volume three. We are back 21 on the record. 22 - - - 23 EXAMINATION 24 - - - 25 BY MR. BARNES:</p>
<p style="text-align: center;">939</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MS. LEVINE: 3 Q. Mr. Gregory, can you identify 4 this document? 5 A. It appears to me that it's a 6 letter from Roger Deffner, UEP chairman and 7 Dolph Baker, the Marketing Committee chairman 8 announcing, looks to me like announcing an 9 egg economic summit. 10 Q. In the second paragraph I'm 11 going to read you a sentence, and you let me 12 know if I read it correctly. "Only UEP 13 members are invited so therefore guests will 14 not be welcome. Invited UEP members are 15 company owners, decision makers, and key 16 staff members." 17 Do you see that? 18 A. Yes. 19 Q. Does that help refresh your 20 recollection that in the economic summit only 21 UEP members were invited? 22 A. Yes. Right. 23 MR. OLSON: Objection to form. 24 BY MS. LEVINE: 25 Q. Thank you.</p>	<p style="text-align: center;">941</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Mr. Gregory, my name is Donald 3 Barnes. I represent Rose Acre Farms. As you 4 know, we are a UEP member and we also have 5 the pleasure of defending this lawsuit. 6 The court reporter has put 7 before you a document marked by Mr. Olson as 8 Gregory Exhibit 65 -- 9 A. Yes. 10 Q. -- which is the United Voices 11 newsletter of November 23, 2004, regarding 12 the egg industry economic summit. Do you see 13 that? 14 A. Yes. Uh-huh. 15 Q. Let me direct your attention to 16 the second page, please. 17 A. Yes. 18 Q. Now, down in the middle of the 19 page, there's a reference to option 1 and 20 option 2. Do you see that reference? 21 A. Yes. Yes. 22 Q. And Mr. Olson directed your 23 attention to those options. The first option 24 was to dispose of hens early, four weeks 25 early. Do you see that?</p>

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<p style="text-align: center;">942</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. The second option he directed 4 your attention to was "To reduce their 5 December 1, 2004 flock size by 5% between the 6 dates of January 1st through April 30, 2005." 7 Do you see that? 8 A. Yes. 9 Q. And then he directed your 10 attention to a list of companies that made 11 their intentions known during economic 12 summit? 13 A. Yes. 14 Q. Is my client's name on that 15 list? 16 A. No, it is not. 17 Q. To your knowledge, Mr. Gregory, 18 did Rose Acre Farms ever sign any of the 19 intention forms in which they expressed an 20 intention to adopt option 1 or option 2 as 21 referenced in these minutes of the economic 22 summit? 23 MR. OLSON: Objection to form. 24 THE WITNESS: Going a little 25 further, I don't think Rose Acre Farms</p>	<p style="text-align: center;">944</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 have sent a letter, you know, saying these 3 people have made these kind of commitments. 4 There's too many series of events. I don't 5 know. 6 Q. I understand. 7 A. I don't know. 8 Q. I'm just going to quickly show 9 you a document which we will mark as 10 Exhibit -- 11 MS. LEVINE: 111. 12 MR. BARNES: And if the reporter 13 doesn't mind, to save time, I'll just 14 put my mark on it. 15 MR. OLSON: We have stickers. 16 MR. BARNES: Okay. Exhibit 111. 17 You got it great, very efficient. 18 - - - 19 (Exhibit Gregory-111, 11/17/04 20 E-mail, Bates NL 000482, was marked 21 for identification.) 22 - - - 23 BY MR. BARNES: 24 Q. Mr. Gregory, let me show you -- 25 MR. BARNES: Steig.</p>
<p style="text-align: center;">943</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 ever agreed to any, any supply 3 recommendation. 4 BY MR. BARNES: 5 Q. Now, you made a statement early 6 on in your testimony that I thought was 7 pretty perceptive. If you give me a minute, 8 I'll hopefully be able to locate it. I 9 believe you said that the industry is 10 independent and the members are, I think you 11 said, damn independent. 12 A. Yes. 13 Q. Is Rose Acre one of those damn 14 independent members? 15 A. I would say I'm afraid so. 16 They do not lack for an opinion. 17 Q. So to your knowledge, Rose Acre 18 never signed any of these intention forms? 19 A. To my knowledge, they never 20 did. 21 Q. Did you do any follow up after 22 the economic summit meeting to determine -- 23 to follow up with the members who did not 24 sign any intention forms? 25 A. Gosh, I don't know. I might</p>	<p style="text-align: center;">945</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Thanks. 3 BY MR. BARNES: 4 Q. -- you what has been marked as 5 Gregory Exhibit 11, which for the record -- 6 MS. LEVINE: 111. 7 BY MR. BARNES: 8 Q. Pardon me. 111, which for the 9 record is a one-page document bearing 10 document identification number NL 000482. It 11 appears to be a memo from Mr. Gregory to Mr. 12 Baker and Mr. Deffner dated November 17, 13 2004, and the subject was "Economic Summit." 14 Can you identify what has been 15 marked as Exhibit 111? 16 A. Yes. It's an e-mail from me to 17 those parties that you just identified and 18 the subject matter. 19 Q. Now, in this document, my 20 client is listed, aren't they? 21 A. Yes. 22 Q. And they're listed under the 23 statement that you made in the letter which 24 says, "Of those in attendance yesterday, the 25 following did not sign an 'intention.'"</p>

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<p style="text-align: center;">946</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Is that correct? 3 A. That's correct. 4 Q. You can put that away, sir. 5 Now, do you recall when Rose 6 Acre Farms became a member of UEP? 7 A. There's a little bit of history 8 here, and we don't really have time for that, 9 so, no, I do not know. 10 Q. Okay. We're going to see if we 11 can refresh your recollection. 12 A. Okay. Good. 13 Q. We're going to mark as our next 14 exhibit, and I hope I have enough of these. 15 This is 112.</p> <p style="text-align: center;">- - -</p> <p>17 (Exhibit Gregory-112, A 18 Membership Opportunity Presented By 19 UEP and Midwest UEP To ROSE ACRE 20 FARMS® THE GOOD EGG PEOPLE®, Bates 21 UE0186974 & UE0186975, was marked for 22 identification.)</p> <p style="text-align: center;">- - -</p> <p>24 BY MR. BARNES: 25 Q. Mr. Gregory, let me show you</p>	<p style="text-align: center;">948</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 BY MR. BARNES: 3 Q. What is this document, 4 Mr. Gregory? 5 A. At the time I was working for 6 Midwest United Egg Producers and trying to 7 recruit members and it appears that this was 8 a piece of literature that I used to try to 9 convince Rose Acre Farms that they -- what 10 the benefits were of becoming a member. I 11 don't know what this -- this is not dated, so 12 I don't know the date. 13 Q. I understand. But it does 14 refer to Midwest UEP on the first page. Do 15 you see that? 16 A. So that would precede 1998. We 17 know that. 18 Q. Thank you. 19 Now, if you look at the second 20 page, the second page is captured "UEP's 21 value to Rose Acre Farms." Do you see that? 22 A. Yes, I do. 23 Q. And then you go on in a 24 narrative form, and you then list things that 25 you believe were of value to Rose Acre Farms.</p>
<p style="text-align: center;">947</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 what has been marked as Exhibit 112. It is a 3 two-page document bearing identification 4 number UE0186974. It's captioned "A 5 Membership Opportunity Presented By UEP and 6 Midwest UEP To ROSE ACRE FARMS® THE GOOD EGG 7 PEOPLE®." 8 Can you identify this document? 9 A. Yes. 10 Q. And is it what it purports to 11 be, an invitation to Rose Acre Farms? 12 MR. OLSON: Objection to form. 13 BY MR. BARNES: 14 Q. What is it? 15 MR. OLSON: You're asking is the 16 document -- 17 MR. BARNES: No, I'm asking the 18 witness. 19 MR. OLSON: I thought you were 20 asking me. 21 MR. BARNES: No. You objected 22 to my question, so I'm going to try to 23 cure the objection. 24 MR. OLSON: Okay. Then 25 I apologize.</p>	<p style="text-align: center;">949</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Objection to form. 3 THE WITNESS: Yes. 4 BY MR. BARNES: 5 Q. And this was given to Rose Acre 6 Farms to induce them to join UEP. Is that 7 correct? 8 MR. OLSON: Objection to form. 9 THE WITNESS: That's correct. 10 BY MR. BARNES: 11 Q. Thank you. 12 Now, this was prior to '98, did 13 you say? 14 A. Yes. 15 Q. How long did it take to you to 16 get Rose -- to convince Rose Acre to become a 17 member, do you recall? 18 A. I do not. No, I'm sorry, I do 19 not. 20 Q. We're going to mark our next 21 exhibit UE -- Gregory -- what are we at? 22 THE WITNESS: 113. 23 - - - 24 (Exhibit Gregory-113, UEP 25 Membership agreement, Bates UE0148105,</p>

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<p style="text-align: right;">950</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 was marked for identification.) 3 - - - 4 BY MR. OLSON: 5 Q. I'm going to show you Gregory 6 Exhibit 113. Give these to Mr. Olson to 7 distribute to the folks over there. 8 Can you identify Exhibit 113? 9 A. It is a UEP membership 10 agreement. 11 Q. What's the date of the 12 membership agreement? 13 A. It's hard to read, but it looks 14 to me like it says 2/11/02. 15 Q. And that is the same as one of 16 the dates in the fax header, is it not, 17 2/11/02? 18 A. 2/11/2002, yes. 19 Q. Is that your son's signature on 20 the bottom of this membership agreement? 21 A. Yes, it is. 22 Q. Now, there's a figure under the 23 column "CAPACITY." Do you see that? 24 A. Yes. 25 Q. It's 16 million?</p>	<p style="text-align: right;">952</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 captioned at the top "MAJOR PROSPECTS FOR 3 UEP." 4 A. Yes. 5 Q. Can you identify that document, 6 Mr. Gregory? 7 A. Yes, sir. 8 Q. What is it? 9 A. It is a list of people that 10 were not UEP members at the time that I wrote 11 this. 12 Q. So you were the author of this 13 document? 14 A. Yes. Yes. 15 Q. Whose handwriting appears in 16 the right-hand column? 17 A. That's my handwriting. 18 Q. Thank you. You may put that 19 document aside. 20 Now, do you recall when UEP 21 became a member of USEM? 22 MR. OLSON: Objection to form. 23 THE WITNESS: No. UEP was never 24 a member of -- 25 BY MR. BARNES:</p>
<p style="text-align: right;">951</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. What is that? 4 A. That is the number of laying 5 hens that Rose Acre Farms owned in their own 6 houses or leased houses out on contract 7 farms. And that's what we're going to 8 invoice them for membership dues. 9 Q. And you did, didn't you? 10 A. And we did. 11 Q. Thank you. 12 Let's mark -- you can put that 13 away. 14 Let's mark as our next 15 exhibit 114. Pass these over to the defense 16 side. Pass these down to you guys. 17 - - - 18 (Exhibit Gregory-114, Major 19 Prospects for UEP, Bates UE0198410, 20 was marked for identification.) 21 - - - 22 BY MR. BARNES: 23 Q. Mr. Gregory, take a look at 24 Exhibit 114. It's a one page document, it 25 bears identification number UE0198410. It is</p>	<p style="text-align: right;">953</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Pardon me, I'm sorry. Do you 3 recall when Rose Acre became a member of 4 USEM? 5 A. I do not know when they did, 6 I've forgotten. 7 Q. Let me show you our next 8 exhibit which is -- 9 A. I feel like I should know all 10 this, but -- 11 Q. No, no. That's okay. 12 A. -- I don't. 13 Q. I wouldn't expect you to 14 remember all of this information about your 15 members going back many, many years. 16 - - - 17 (Exhibit Gregory-115, 12/22/06 18 USEM Membership Agreement and Export 19 Commitment, was marked for 20 identification.) 21 - - - 22 BY MR. BARNES: 23 Q. Can you identify that exhibit? 24 A. It is a membership agreement 25 and export commitment for Rose Acres with</p>

<p style="text-align: right;">954</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 United States Egg Marketers. 3 Q. What is the date of that USEM 4 Rose Acre membership agreement? 5 A. 22 December 2007. 6 Q. But I believe that date may be 7 incorrect for the record because if you look 8 at the -- if you look at the fax header on 9 the top -- 10 A. That says December 22, 2006. 11 Q. I just wanted to correct the 12 record. 13 A. 2006. 14 Q. I believe it is a December 22, 15 2006, document. 16 A. Right. 17 Q. Now, under paragraph 1a at the 18 top, "House capacity...", do you see that 19 column? 20 A. Yes. 21 Q. Whose handwriting is that? 22 A. I cannot read the signer of 23 this document, but it's somebody from Rose 24 Acre Farms. 25 Q. Now, there's the handwritten --</p>	<p style="text-align: right;">956</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 increase. 3 Q. Thank you. You can put that 4 one aside. 5 I'm just going to ask you to 6 identify one document and then I am going to 7 be quiet. Let's mark as our next exhibit. 8 - - - 9 (Exhibit Gregory-116, E-mail 10 chain, Bates MFI0247110, was marked 11 for identification.) 12 - - - 13 BY MR. BARNES: 14 Q. This is Exhibit 116. It has a 15 document identification number MFI0247110, 16 and it appears to be an e-mail exchange 17 between Mr. Gregory and Ky Hendrix. Is that 18 correct, Mr. Gregory? 19 MR. OLSON: Have you handed us a 20 copy? 21 MR. BARNES: I'm sorry, I 22 apologize. I apologize. 23 MR. OLSON: This is 116. Okay. 24 THE WITNESS: Yes, it does. 25 BY MR. BARNES:</p>
<p style="text-align: right;">955</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 in addition to the number 20 million written 3 under the line, there's another handwritten 4 number. 5 A. Yes. I believe I recognize 6 that as Linda Reichert who worked for us and 7 was the one that did the invoicing for 8 membership. And I would suspect, I'm 9 guessing now, that she had called Rose Acre 10 Farms to get a more exact number of what the 11 membership. And it turned out to be, I 12 believe that's her writing that says 13 \$20,586,000. 14 Q. Now, would you compare that to 15 the Rose Acre house capacity on Exhibit 113, 16 please? 17 A. That's -- 18 Q. Exhibit 113. And what is the 19 house capacity on Exhibit 113? 20 A. I'm sorry. 16 million. 21 Q. So how -- what is the increase 22 in the house capacity for Rose Acre hens from 23 2000 -- pardon me, 2/11/2002 until December 24 of 2006? 25 A. Four and a half million bird</p>	<p style="text-align: right;">957</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Do you recognize that as an 3 e-mail exchange that you participated in with 4 Mr. Hendrix? 5 A. Yes, I do. 6 Q. Mr. Hendrix was a Rose Acre 7 employee at the time. Is that correct? 8 A. Yes. 9 MR. BARNES: Thank you very 10 much, Mr. Gregory. I have no further 11 questions. Thank you for your 12 patience. 13 MS. LEVINE: I'm going to ask 14 you a quick question off the record 15 about timing so that we can finish up 16 today. Can you go off the record for 17 a minute? 18 VIDEOPHOTGRAPHER: The time is 19 approximately 2:49 p.m. We're off the 20 record. 21 - - - 22 (A recess was taken.) 23 - - - 24 VIDEOPHOTGRAPHER: The time is 25 approximately 2:51 p.m. We're back on</p>

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<p style="text-align: center;">958</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 the record. 3 - - - 4 FURTHER EXAMINATION 5 - - - 6 BY MR. OLSON: 7 Q. Mr. Gregory, let's see how we 8 can do here. You can put everything down. 9 You don't need to look at the document right 10 now. 11 In the exchange with Rose Acre 12 counsel, you discussed the -- you observed 13 that Rose Acre was an independent company. 14 Right? 15 A. Yes. 16 Q. Are all UEP members independent 17 companies? 18 A. Yes. 19 Q. And they all have independent 20 views? 21 A. Yes. 22 Q. And with respect to the UEP 23 certified program, did all UEP members have 24 the same identical interests or did they have 25 their own independent interests?</p>	<p style="text-align: center;">960</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Right? 3 A. This letter was not sent to me. 4 I was not copied on this. This was sent 5 to -- it was sent to Irving Isaacson and 6 copied to Al Pope. 7 Q. And then Mr. Isaacson sent it 8 to you. Correct? 9 A. No. I don't know -- 10 Q. Look at the cover. 11 A. Okay. Yeah. Yeah. Okay. 12 Yeah. Yes. Okay. 13 Q. So Exhibit 48 was sent to you? 14 A. Uh-huh. 15 Q. And what was sent to you was a 16 letter written by John Mueller. Right? 17 A. Uh-huh. Yes. 18 Q. We talked about it a couple of 19 times. Some of the things Mr. Mueller said 20 got you pretty upset. Right? 21 A. You know -- 22 Q. I'm just trying to get on the 23 same page here. 24 A. What upset me was the fact that 25 he's accusing me of having a hidden agenda.</p>
<p style="text-align: center;">959</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Well, there is different 3 opinions throughout the 200 or so members or 4 whatever it was. But they all have an 5 independent view, yes. I'm not sure I'm 6 answering it properly. But it wasn't like we 7 were all marching in the same line in the 8 early days of this. 9 Q. Your members have independent 10 views, they have independent business 11 interests as well. Correct? 12 A. Yes. 13 MS. LEVINE: Object to the form 14 of the question. 15 THE WITNESS: Yes. 16 BY MR. OLSON: 17 Q. Now, let's look at Exhibit 48 18 which in front of you, please. 19 A. Yes. 20 Q. Your counsel, Ms. Levine, 21 circled back to this exhibit. This was the 22 letter that was sent to you by Irving 23 Isaacson originally written by John Mueller. 24 And this letter contained some statements by 25 Mr. Mueller that got you pretty upset.</p>	<p style="text-align: center;">961</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Okay. I just want to be clear 3 on what upset you about the letter. 4 A. He could have been man enough 5 to have said that to my face. 6 Q. Now, Mr. Gregory, in your 7 personal opinion as the senior vice president 8 of UEP at this time, you see in the paragraph 9 from Mr. Mueller that starts with 10 "Second...", and he says that he had visited 11 with you and Al Pope about seeking some 12 indicia of proof that UEP is and remains a 13 viable agricultural cooperative association. 14 Do you see that? 15 A. Yes. 16 Q. Now, at the time in your 17 position as senior vice president, was that a 18 fair question to ask? 19 MS. LEVINE: Object to the form 20 of the question. Calls for 21 speculation. 22 THE WITNESS: I think it's 23 probably a fair question by any 24 member. 25 BY MR. OLSON:</p>

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<p style="text-align: center;">962</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. And he continues, Mr. Mueller 3 continues, he says, "...I am wondering how 4 the associate or allied memberships auger 5 into all of this?" 6 Do you see that? 7 A. Yes. 8 Q. Was that fair question for a 9 member to have? 10 MS. LEVINE: Object to the form 11 of the question. Calls for speculation. 12 THE WITNESS: It might be if you 13 were naive about what we had done. If 14 you had been attending meetings and 15 you were on the board and so forth, 16 you knew that UEA Allied and Further 17 Processors was a completely separate 18 entity. 19 BY MR. OLSON: 20 Q. But was it fair for someone to 21 ask that question? 22 A. It was fair to ask a question, 23 but Bob Sparboe would have very well known, I 24 think, that they were separate organizations. 25 Q. Now, if you turn to the end of</p>	<p style="text-align: center;">964</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I think so. 3 Q. Now, you with Ms. Levine 4 discussed the fact that you felt some comfort 5 in -- well, you know what, let me wait. I'm 6 not sure we have the exhibit yet. 7 Let me ask this question: In 8 the context of Sparboe with Ms. Levine, you 9 also discussed the 100 percent rule. Do you 10 recall that? 11 A. Yes. 12 Q. You gave some testimony to the 13 effect that your belief was 100 percent 14 compliance was the only way to have a 15 credible program. Right? 16 A. Yes. 17 Q. That was your belief. Right? 18 A. Yes. 19 Q. Now, if full compliance was so 20 essential to having a credible UEP program, 21 why didn't UEP require compliance with the 22 program as a condition of membership? 23 MS. LEVINE: Object to the form 24 of the question. Mischaracterizes -- 25 THE WITNESS: Ask that again,</p>
<p style="text-align: center;">963</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Mr. Mueller's letter, this is a portion, that 3 paragraph we've looked at, it says, 4 "Finally,...we are concerned that yourself or 5 a reputably retained law firm...", goes on 6 about whether the "...cooperative status 7 still attaches to the UEP trade association; 8 and that the Animal Welfare initiatives there 9 under have been scrutinized by concerned 10 parties from a thoroughly legal perspective." 11 In your position at that time 12 as senior vice president, was it fair for a 13 member to ask whether the animal welfare 14 initiatives had been scrutinized from a legal 15 perspective? Fair question? 16 MS. LEVINE: Object. 17 THE WITNESS: It's a fair 18 question. However, I think in many 19 cases there was counsel at these 20 meetings. 21 BY MR. OLSON: 22 Q. But it's a fair concern. Right? 23 A. I don't have any problem with 24 that. 25 Q. Fair question to ask?</p>	<p style="text-align: center;">965</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 I'm not sure I understand that. 3 MR. OLSON: Are you done? 4 MS. LEVINE: The membership in 5 what? 6 MR. OLSON: I'll ask it again. 7 BY MR. OLSON: 8 Q. If full compliance with the UEP 9 certified program was so essential to UEP's 10 credibility, why wasn't being certified under 11 the program a condition of membership in UEP? 12 A. Now, they're completely two 13 separate things. This UEP certified program 14 is unconditional of membership because we 15 wanted to spread it out to the whole 16 industry, let anybody that needed to market 17 these eggs have access to it. 18 Q. But why didn't you require all 19 UEP members to be certified under the 20 program? 21 A. It was a voluntary program. 22 Q. Why? If full compliance was so 23 essential -- 24 A. No, no, no, no. Full 25 compliance, 100 percent rule is completely</p>

<p style="text-align: center;">966</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 different. 3 Q. Well, if the credibility -- 4 A. You're wasting your time with 5 nitpicking stuff again today and I'm going to 6 be out of here. 7 Q. That's fine. You can stand up 8 and walk out whenever you want. 9 A. I'm just telling you you're 10 wasting your time. 11 Q. And I'm telling you, you can 12 stand up and walk out whenever you want. 13 MS. LEVINE: Mr. Gregory, he 14 wants you to walk out. We're going to 15 finish the deposition. Sit back and 16 relax. You can ask the questions and 17 you sit back and answer. 18 MR. OLSON: I appreciate no more 19 threats like that. 20 BY MR. OLSON: 21 Q. Now, if -- this is all I want 22 to understand. If your belief was the 23 credibility of UEP -- 24 A. The credibility as we're 25 talking about, not credibility of UEP, we're</p>	<p style="text-align: center;">968</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. LEVINE: Objection. Asked 3 and answered now three or four times. 4 THE WITNESS: I don't know -- 5 yeah, I don't know how -- 6 MS. LEVINE: If you can give any 7 other answer -- 8 THE WITNESS: I don't have 9 another answer. 10 MS. LEVINE: Fine. 11 BY MR. OLSON: 12 Q. What was the previous answer? 13 MS. LEVINE: You can read it 14 back. 15 MR. OLSON: I'm trying, as you 16 know, not to take the full time, but 17 this is not helping. 18 MS. LEVINE: I know. But you 19 asked the same question three times. 20 MR. OLSON: We can do it your 21 way, I'm just telling you it's not 22 going to help get out of here with me 23 not taking the full time. 24 BY MR. OLSON: 25 Q. The question is, why didn't UEP</p>
<p style="text-align: center;">967</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 talking credibility of the UEP certified 3 program. 4 Q. Why did you keep the program 5 voluntary as opposed to requiring that all 6 members be a part of it? That's the 7 question. 8 A. Because I just said it is not a 9 condition of membership. 10 Q. And the question is why, why 11 not? 12 MS. LEVINE: Asked and answered 13 three times. 14 THE WITNESS: Because we did not 15 want to force people to be UEP 16 members. This program was available. 17 You don't have to be a UEP member to 18 use this program. 19 BY MR. OLSON: 20 Q. But you wanted everyone in the 21 industry to be in the program. Right? 22 A. Sure, I'd like that. 23 Q. Why didn't you require 24 compliance with the program as a condition of 25 UEP membership?</p>	<p style="text-align: center;">969</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 decide to require compliance with the program 3 as a condition of membership? 4 MS. LEVINE: Asked and answered. 5 You can repeat your answer to the best 6 of your ability. 7 THE WITNESS: This is an animal 8 welfare program. This is not a 9 membership program. We recognize that 10 there are people being provided with 11 eggs out there that come from people 12 that are not our UEP members. We did 13 not want them being shut out of this 14 program. 15 MR. OLSON: Have we found 16 Exhibit 105? Are they there? 17 MS. LEVINE: You're looking at 18 105? 19 MR. OLSON: 105. 20 MS. LEVINE: I'm showing the 21 witness 105. 22 MR. OLSON: Okay. 23 BY MR. OLSON: 24 Q. In questions with Ms. Levine, 25 you testified that you had some comfort</p>

<p style="text-align: center;">970</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 because USDA personnel from time to time sat 3 in the room at meetings. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And were those USDA personnel 6 that sat in the room, were they lawyers?</p> <p>7 A. I don't know what their -- I 8 don't know what their education is.</p> <p>9 Q. So to your knowledge, none of 10 them were lawyers. Correct?</p> <p>11 A. To my knowledge, they were not.</p> <p>12 Q. Did you ever ask that -- a USDA 13 or any other government official whether 14 UEP's conduct was lawful?</p> <p>15 A. I don't recall whether I did or 16 not.</p> <p>17 Q. Exhibit 105, which you talked 18 to your counsel about, is a letter to a Mr. 19 William Hawks. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know Mr. William Hawks' 22 educational background?</p> <p>23 A. No, I do not.</p> <p>24 Q. Do you know if he's a lawyer?</p> <p>25 A. No, I do not.</p>	<p style="text-align: center;">972</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. When did you hire Mr. Wilson as 3 compliance counsel?</p> <p>4 A. I don't know the date.</p> <p>5 Q. But it was sometime around this 6 time. Right?</p> <p>7 A. Yes.</p> <p>8 Q. It was sometime around 2009?</p> <p>9 A. Yes.</p> <p>10 Q. And prior to that, there was no 11 formal UEP/USEM compliance counsel. Correct?</p> <p>12 MS. LEVINE: Object to the form 13 of the question.</p> <p>14 MR. MCKENNEY: Objection.</p> <p>15 Beyond the scope.</p> <p>16 THE WITNESS: Your question 17 again was what?</p> <p>18 BY MR. OLSON:</p> <p>19 Q. And prior to hiring Mr. Wilson, 20 there was no position of UEP/USEM compliance 21 counsel. Correct?</p> <p>22 MS. LEVINE: Object to the form 23 of the question.</p> <p>24 MR. MCKENNEY: Same objection.</p> <p>25 MS. LEVINE: As to Mr. Gregory's</p>
<p style="text-align: center;">971</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Did you ever ask him for legal 3 advice?</p> <p>4 A. No, I did not.</p> <p>5 MR. OLSON: Have we found 6 Exhibit 94?</p> <p>7 MS. LEVINE: I have Exhibit 94.</p> <p>8 MS. TURNER-DODGE: 95.</p> <p>9 MR. OLSON: Sorry, 95.</p> <p>10 MS. LEVINE: 95.</p> <p>11 MR. OLSON: We'll try to find 12 it, but I'll tell you what it is while 13 we're looking for it.</p> <p>14 MS. LEVINE: We got it. We got 15 it. We got it. Handing the witness 16 95.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. 95, if you look at the first 19 page, it's Board of Directors' meeting 20 October 15-16, 2009. There's a President's 21 comment. "President Gene Gregory introduced 22 Randon Wilson as UEP/USEM compliance council 23 (sic)."</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: center;">973</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 understanding. You can answer who 3 your lawyers were.</p> <p>4 THE WITNESS: I thought that the 5 attorneys that we had previous to 6 Randon Wilson were familiar with all 7 the things that we need to do, and 8 that they were as such serving as 9 compliance counsel when they were at 10 these meetings.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. And that's Brann & Isaacson?</p> <p>13 MR. MCKENNEY: Objection.</p> <p>14 Beyond the scope.</p> <p>15 THE WITNESS: It was. And then 16 Nowell Berreth after that, yes.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Now, you talked about with 19 Ms. Levine, we were discussing the origin of 20 the Animal Welfare Program and talked about 21 what happened in Europe.</p> <p>22 A. Yes.</p> <p>23 Q. You said the changes that 24 happened in Europe were not science based?</p> <p>25 A. That was my opinion, yes.</p>

<p style="text-align: center;">974</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. What part of the changes that 3 occurred in Europe did you believe were not 4 science based? 5 A. The enriched colony cage was a 6 thought and a design by a gentleman named Dr. 7 Michael Appleby who I happened to know. And 8 what he designed was just a little bit bigger 9 cage and he put a nest in it and a scratch 10 area in it and then he convinced the -- he 11 and his activist friends convinced the 12 legislators that this is what they should 13 use. Now, other than Dr. Appleby, there was 14 no other peer review science anything 15 whatsoever, but -- and as it turned out, 16 great deal of work came later on that. And 17 over the evolution of time, I think they 18 designed a very good enriched colony case. 19 But in the beginning I do not believe it was 20 science based. 21 Q. Other than giving the hens an 22 enriched cage, and just to be clear, we're 23 talking about giving hens a scratching pad 24 and things like that. Right? 25 A. Yes.</p>	<p style="text-align: center;">976</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. I can't remember all the things 3 that was in their guidelines. We're talking 4 about -- 5 Q. Sitting here right now, 6 anything else come to mind? 7 A. No. 8 Q. Now, you talked about the 9 Scientific Committee with your counsel. Were 10 there formal rules, to your knowledge, that 11 governed how the Scientific Committee made 12 its decisions? 13 A. No, but Dr. Armstrong 14 identified early on that everybody would have 15 their input and that everybody would have 16 different research projects, but at the end 17 of the conclusion of all that, they had to 18 come to a consensus and leave the room in 19 support of whatever the recommendation was. 20 Q. Does consensus mean majority 21 rule or something different? 22 A. No, in this case, they debated 23 long enough that virtually it was unanimous. 24 Q. So decisions at the Scientific 25 Committee weren't made by voting?</p>
<p style="text-align: center;">975</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. The normal -- we're talking 3 about giving hens the opportunity to do the 4 types of things that hens like to do. Right? 5 MS. ANDERSON: Objection. 6 MS. LEVINE: Objection to the 7 form of the question. Calls for 8 speculation as to the -- 9 THE WITNESS: I'm not a 10 scientist. I don't know what hens 11 like to do. 12 BY MR. OLSON: 13 Q. Well, things like a scratching 14 pad and other things like that. Right? 15 MS. LEVINE: Object. Same 16 objection. Calls for speculation. 17 BY MR. OLSON: 18 Q. Okay. What other things go in 19 an enriched cage, to your knowledge? 20 A. There is a perch, there is a 21 nest area and there is a scratch area. 22 Q. Other than providing those 23 types of things to hens, are there other 24 things that were happening in Europe that you 25 thought were not science based?</p>	<p style="text-align: center;">977</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. It was not a case of aye, yes, 3 that kind of stuff, no. 4 Q. You talked about the Producer 5 Committee having what you called 6 contributors. Do you see that? 7 A. Yes. 8 Q. Was that a formal position that 9 was spelled out in any document? 10 A. No. 11 Q. You talked about FMI and NCCR 12 participating in the development of the UEP 13 program? 14 A. Yes. 15 Q. You identified FMI and NCCR 16 giving some input into the phase-in schedule? 17 A. Yes. 18 Q. Are there other aspects of the 19 UEP program that you attribute to FMI and 20 NCCR? 21 A. Yes, because they -- when they 22 gave us the original endorsement, they noted, 23 I think this is -- I think they noted that 24 they did not agree with our early guidelines 25 of the ammonia standards.</p>

<p style="text-align: center;">978</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. Any others? 3 A. Again, you know, I don't 4 recall. 5 Q. You testified in response to 6 Ms. Levine's questions that flock size has 7 increased considerably over the time of the 8 program. Do you recall that? 9 A. Yes. 10 Q. What's the data you're basing 11 that on? 12 A. It's based upon the USDA 13 monthly hen inventory figures. 14 Q. Are you comparing those figures 15 from one year to the figures in another year 16 or are you doing something different? 17 A. I'm comparing it month by month 18 and arriving at a yearly average of those 19 monthly figures in doing so. And then 20 comparing one year to the other. 21 Q. So a yearly average over time 22 is the basis for the figure. Correct? 23 A. I guess that's what I said, yes. 24 Q. That was the basis for your 25 statement? You have to verbalize your</p>	<p style="text-align: center;">980</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Bell's -- 3 A. We've been over this three 4 times now. 5 MS. LEVINE: Mr. Gregory, hold 6 on. You're almost done. 7 BY MR. OLSON: 8 Q. Where we're talking -- where 9 you report Mr. Bell's ideas about an industry 10 wide policy of a minimum space floor 11 allowance. 12 MS. LEVINE: Hold on. We need 13 to get Mr. Gregory the document. 14 THE WITNESS: I remember that. 15 MS. LEVINE: You need to have 16 the document in front of you. 17 BY MR. OLSON: 18 Q. Here's an extra copy. 19 Page 3. Now, in the context of 20 discussing this with your counsel, you gave 21 some testimony about how you were always 22 careful when you talked about flock reduction 23 to talk about per cage flock reduction. 24 Right? You have to verbalize the answer. 25 A. Yes.</p>
<p style="text-align: center;">979</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 answer. 3 A. Yes. 4 Q. Did you take account -- into 5 account things like population changes? 6 A. What population changes? 7 Q. People. 8 A. No. We're talking about -- 9 we're talking about comparing bird numbers. 10 We're not talking about comparing people 11 numbers. Your question was about and her 12 question was about the flock size. 13 Q. Your statement about flock size 14 increasing is just a pure statement that the 15 numbers in later years are larger than 16 numbers in the earlier years. Correct? 17 A. According to USDA statistics. 18 Q. And you have no opinion on what 19 those numbers would have been absent the UEP 20 certified program. Correct? 21 A. I don't have any way of knowing 22 what that would be. 23 Q. Now, we need Exhibit 11. Does 24 anybody have it? This is United Voices from 25 August 2, 1999, where you report Mr.</p>	<p style="text-align: center;">981</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. And you said you only talked 3 about reduction in a single cage. Right? 4 A. Well, I'm talking about the 5 space per bird in single cage is what I'm 6 talking about. And then so that you don't 7 trip me up, and in order to get this done, we 8 used the house average to get it done. And 9 so when I talk about birds, I'm talking about 10 individual cage as well as I'm talking about 11 a house number. 12 Q. But this idea reported to the 13 membership in August of 1999 in the United 14 Voices isn't talking about eliminating birds 15 from a single cage, is it? 16 A. You know, I'm having trouble 17 with this real thing because I don't know 18 what it has to do with this, but know Don 19 Bell has written about the fact that there 20 are birds within houses in this -- in the 21 country that are stocked at less than 22 48 square inches and that it would help 23 the -- help things if everybody was required 24 to go to 48 inches. 25 Q. And this idea proposed to the</p>

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<p style="text-align: center;">982</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 membership about -- that would lead to 3 millions of extra birds being eliminated, 4 that's not being eliminated from a cage. 5 Right?</p> <p>6 MS. LEVINE: Object to the form 7 of the question.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. That's being eliminated from 10 the industry?</p> <p>11 MS. LEVINE: Mr. Gregory --</p> <p>12 BY MR. OLSON:</p> <p>13 Q. True statement?</p> <p>14 MS. LEVINE: -- listen to the 15 question. Object to the form of the 16 question. See how best you can answer 17 it.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. True statement?</p> <p>20 A. That's what the document says.</p> <p>21 Q. Now let's look at 23. I'll 22 give you a nonofficial copy, but here's 23.</p> <p>23 A. What time is your flight?</p> <p>24 Q. I have a meeting, very 25 important meeting at 4:00. We're almost</p>	<p style="text-align: center;">984</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 laying hens. USDA doesn't report inventory 3 on a per cage. So we're talking about, yes, 4 a national hen inventory.</p> <p>5 Q. Let me hand you what's been 6 marked 46. You talked about this with your 7 counsel. Page 2. And there were some 8 testimony about this price turnaround where I 9 thought you were saying something about some 10 prices went up, some prices went down. Do 11 you recall that testimony?</p> <p>12 A. And I might have and I might 13 have been in error. I don't know. I scanned 14 it very quickly.</p> <p>15 Q. Page 2 over here.</p> <p>16 A. Yes.</p> <p>17 Q. So let's just see if we can 18 clear it up. Shell eggs is a 16 cents per 19 dozen increase?</p> <p>20 A. Right. Yep.</p> <p>21 Q. Breaking stock, 14.8 cent per 22 dozen increase. Right?</p> <p>23 A. Right.</p> <p>24 Q. Unpasteurized whole, 11.8 cent 25 per pound increase. Right?</p>
<p style="text-align: center;">983</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 done.</p> <p>3 23, in the same context with 4 your counsel, you talked about this idea, you 5 kept your discussions to reduction per cage. 6 The discussion here on page 1, 5b --</p> <p>7 A. We've done this before, haven't 8 we?</p> <p>9 Q. This isn't talking about per 10 cage reduction in flock, is it?</p> <p>11 A. You asked me about this before, 12 haven't you? I've seen this before.</p> <p>13 Q. Yes. It's not talking about a 14 per cage flock reduction, is it?</p> <p>15 MS. LEVINE: Mr. Gregory, look 16 at the document.</p> <p>17 THE WITNESS: That says, "Pullet 18 Costs Per Cage."</p> <p>19 BY MR. OLSON:</p> <p>20 Q. When it -- 5b that talks about 21 inevitably reducing layer population, that's 22 not talking about a per cage reduction, is 23 it?</p> <p>24 A. You know, almost everything 25 we've talked about is about USDA inventory of</p>	<p style="text-align: center;">985</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 A. Let me correct my statement 3 then. And it shows in each category there 4 was a price increase.</p> <p>5 Q. That was helpful. We can put 6 that aside.</p> <p>7 Mr. Gregory, isn't it a fact 8 that the Scientific Advisory Committee 9 recommended that induced molting should not 10 be compared to the type of natural molting 11 that hens go through?</p> <p>12 A. Yes, they do.</p> <p>13 Q. They said that that's not a way 14 induced molting should be defended. Correct?</p> <p>15 A. That's exactly right.</p> <p>16 Q. So if someone tried to 17 define -- defend induced molting as 18 comparable to the natural --</p> <p>19 A. I was not trying to defend it 20 by doing so.</p> <p>21 Q. And if someone did that, you 22 would disagree with them?</p> <p>23 A. I was trying to explain it to 24 people that I think don't know the egg 25 industry.</p>

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<p style="text-align: center;">986</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: Does anybody have 3 Exhibit 27? 4 THE WITNESS: How many hours 5 have they had now? 6 MS. LEVINE: A couple more 7 minutes, Mr. Gregory. Concentrate on 8 your answers. 9 MR. BARNES: It doesn't matter 10 if it's official or not.</p> <p>11 BY MR. OLSON: 12 Q. You know what, just keep this. 13 We can skip this document. Here you go. We 14 can skip it. Let me see -- all right. Do we 15 have -- do you have 20 which is the final 16 Scientific Advisory Committee report? There 17 it is.</p> <p>18 A. You know, a question is I 19 raised my hand and said I'd swear to tell the 20 truth. And I'm being called a liar evidently 21 now.</p> <p>22 Q. And 107.</p> <p>23 THE WITNESS: I'm irritated a 24 bit, Jan. I don't appreciate being 25 called a liar.</p>	<p style="text-align: center;">988</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 Q. So there are different aspects 3 of looking at space. Correct? 4 A. Yes. And I tried to explain to 5 you that you couldn't do all that at once and 6 so as the evolution of equipment changed, 7 those things improved as a result of it. 8 Q. And the Scientific Committee 9 said science says that a hen should be 10 guaranteed a cage that does not require their 11 head to protrude into the cage above. Right? 12 A. Yes, they did. 13 Q. And that was never adopted by 14 the UEP guidelines. Correct? 15 A. You know, right now, I'm about 16 ready to agree with anything you want to do. 17 Handcuff me, I'm ready to go. 18 Q. Well, that's not helpful as 19 much as I appreciate the offer. 20 MS. LEVINE: Look at the 21 document. 22 THE WITNESS: I've been over 23 this I don't know how many times. 24 BY MR. OLSON: 25 Q. I think we're almost -- we're</p>
<p style="text-align: center;">987</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. LEVINE: I know. We're 3 trying not to bring you back. A 4 couple more minutes. 5 THE WITNESS: I raised my hand 6 and said I'd tell the truth. So 7 what's your question?</p> <p>8 BY MR. OLSON: 9 Q. Now, Mr. Gregory, this concept 10 of the space given to hens -- 11 A. Yes. 12 Q. -- that's not just a single 13 concept. There are different aspects of it. 14 Right? 15 A. I don't understand the 16 question. 17 Q. Well, you can look at space as 18 the average space in a cage. Right? 19 A. Yes. 20 Q. But you can also look at feeder 21 space. Right? 22 A. It's -- yes. 23 Q. You can look at the height a 24 chicken gets. Right? 25 A. Yes.</p>	<p style="text-align: center;">989</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 really almost done here. I want to talk 3 about the letter that Mr. Armstrong wrote 4 about backfilling. It's 108. 5 A. I remember it. 6 Q. Do you recall, Mr. Gregory, 7 the -- here it is. Do you recall the 8 circumstances that led up to Mr. Armstrong 9 sending this letter to Paul Bahan? 10 A. I do not. 11 Q. Were you involved in discussing 12 this issue with Mr. Armstrong before the 13 letter was written? 14 A. I would have no way of knowing. 15 I don't know. 16 Q. You don't recall whether you 17 were. 18 A. No, I do not. 19 Q. Correct? 20 A. Pardon? 21 Q. You don't recall whether you 22 were. Correct? 23 A. That's right. 24 MR. OLSON: Anybody else have 25 anything essential? Okay. Then I</p>

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<p style="text-align: right;">990</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 believe that's all we have. Thank 3 you. 4 MS. LEVINE: Mr. Gregory, I have 5 one question. I have one -- do you 6 have a question? 7 MS. ANDERSON: No. I just want 8 the record to reflect the agreement of 9 counsel. 10 MR. HUTCHINSON: Sparboe Farms 11 does have questions. 12 MS. LEVINE: One second. 13 MR. HUTCHINSON: But I'll make 14 the record. 15 MS. LEVINE: Mr. Gregory, do you 16 stand by all the answers that you gave 17 today in response to my questions? 18 THE WITNESS: I never 19 intentionally lied about anything and 20 I raised my hand and said I would tell 21 the truth. 22 MS. LEVINE: And you stand by 23 everything you answered to my 24 questions? 25 THE WITNESS: Yes.</p>	<p style="text-align: right;">992</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MS. ANDERSON: Just for the 3 record, Michael Foods has questions 4 relating to the testimony that 5 Mr. Gregory has given today. So if 6 you would like Michael Foods to notice 7 a separate deposition, I'd like your 8 agreement on the record you will not 9 object to that regardless that he's 10 already been offered and been deposed 11 in the MDL action. 12 MS. LEVINE: We will not object 13 to that. 14 MR. HUTCHINSON: And that goes 15 for Sparboe Farms as well. 16 MS. LEVINE: We will not object 17 to that. 18 MR. OLSON: Thank you. 19 VIDEOGRAPHER: The time is 20 approximately 3:19 p.m. This ends 21 tape six, volume three. We're now off 22 the record. 23 (Witness excused.) 24 (Deposition concluded at 3:19 25 p.m.)</p>
<p style="text-align: right;">991</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 MR. OLSON: And do you stand by 3 everything you answered to my 4 questions? 5 THE WITNESS: Yes. 6 MS. LEVINE: I think we have 7 some stipulations. 8 THE WITNESS: Even though you 9 asked it a half a dozen times. 10 MS. LEVINE: I think we have 11 some stipulations for the record. 12 MR. HUTCHINSON: Yes. Sparboe 13 Farms does have questions for 14 Mr. Gregory. Given that we subjected 15 him now to three days of testimony and 16 he has a flight to catch, we're 17 willing to take his -- that testimony 18 at a later date provided you will 19 agree to make him available. 20 MS. LEVINE: We're going to 21 close this deposition as noticed by 22 plaintiffs, and if other defendants 23 want to notice his deposition and 24 take -- and ask questions, we will so 25 accommodate.</p>	<p style="text-align: right;">993</p> <p>1 2 C E R T I F I C A T E 3 4 I do hereby certify that I am a Notary 5 Public in good standing, that the aforesaid 6 testimony was taken before me, pursuant to 7 notice, at the time and place indicated; that 8 said deponent was by me duly sworn to tell 9 the truth, the whole truth, and nothing but 10 the truth; that the testimony of said 11 deponent was correctly recorded in machine 12 shorthand by me and thereafter transcribed 13 under my supervision with computer-aided 14 transcription; that the deposition is a true 15 and correct record of the testimony given by 16 the witness; and that I am neither of counsel 17 nor kin to any party in said action, nor 18 interested in the outcome thereof. 19 20 WITNESS my hand and official seal this 21 9th day of July, 2013. 22 23 _____ 24 Notary Public 25</p>

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<p style="text-align: center;">994</p> <p>1 2 INSTRUCTIONS TO WITNESS 3 4 Please read your deposition over 5 carefully and make any necessary corrections. 6 You should state the reason in the 7 appropriate space on the errata sheet for any 8 corrections that are made. 9 After doing so, please sign the errata 10 sheet and date it. 11 You are signing same subject to the 12 changes you have noted on the errata sheet, 13 which will be attached to your deposition. 14 It is imperative that you return the 15 original errata sheet to the deposing 16 attorney within thirty (30) days of receipt 17 of the deposition transcript by you. If you 18 fail to do so, the deposition transcript may 19 be deemed to be accurate and may be used in 20 court. 21 22 23 24 25</p>	<p style="text-align: center;">996</p> <p>1 ERRATA SHEET 2 IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION 3 DATE: JUNE 27, 2013 4 PAGE LINE CORRECTION AND REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 (DATE) GENE W. GREGORY</p>
<p style="text-align: center;">995</p> <p>1 2 ACKNOWLEDGMENT OF DEPONENT 3 I have read the foregoing transcript of 4 my deposition and except for any corrections or 5 changes noted on the errata sheet, I hereby 6 subscribe to the transcript as an accurate record 7 of the statements made by me. 8 9 10 _____ 11 12 SUBSCRIBED AND SWORN before and to me 13 this ____ day of _____, 20____. 14 15 16 17 _____ 18 19 20 My Commission expires: 21 22 23 24 25</p>	

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